(24,942)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1915.

## No. 659.

THE PULLMAN COMPANY, A CORPORATION, PLAINTIFF IN ERROR,

*vs.*

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 11, 1915.

1 Be it remembered that on the 16th day of March, A. D. 1915, at a regular term of the Supreme Court of the State of Florida, came the appellant, the Pullman Company, a Corporation, by counsel, and filed in the Clerk's office of the Supreme Court of Florida a transcript of the record of the proceedings and decree of the Circuit Court of Florida for Leon County, in a certain cause wherein the Pullman Company was complainant, and W. V. Knott, as Comptroller of the State of Florida, was defendant, and of the appeal therein from the decree of the Circuit Court therein rendered, which said transcript of record of the cause aforesaid and subsequent proceedings to decree and appeal therefrom is in the words and figures as follows, to-wit:

2 *Transcript of Record of Proceedings in the Circuit Court of Leon County, Florida, in the Suit of the Pullman Company, Complainant, vs. W. V. Knott, as Comptroller of the State of Florida, Defendant.*

On the 14th Day of January, 1915, Complainant Filed His Bill of Complaint, in the Words and Figures Following:

In the Circuit Court, Second Judicial Circuit, Leon County, Florida, in Chancery.

THE PULLMAN COMPANY, Complainant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Defendant.

To the Honorable John W. Malone, Judge of the Circuit Court in and for the Second Judicial Circuit, Leon County, Florida:

Your orator, The Pullman Company, as complainant, brings this bill of complaint against the above named defendant and thereupon complains and says:

I.

That your orator is a corporation created and existing under and by virtue of the laws of the State of Illinois, and having its principal place of business in the City of Chicago, County of Cook and State of Illinois, and is a resident and citizen of said State of Illinois.

That the defendant is the *fully* elected, qualified and acting Comptroller of the State of Florida, and is a citizen of said State
3 of Florida, and a resident of Leon County.

II.

That your orator has complied with all of the statutes of the State of Florida requisite to its engaging in business in said State, and has been for more than ten years last past continuously and now is

engaged in the business of furnishing sleeping cars and parlor cars to railroad companies for the use of such companies upon their railroads of such railroads therein, under written contracts for terms of years, and for the transportation of the passengers throughout the United States of America and the several States thereof, and in adjacent foreign countries, and has been during all said period and now is engaged in furnishing under such written contracts for terms of years sleeping cars and parlor cars to railroad companies whose railroads run in, into and out of the State of Florida, and that some of your orator's said sleeping cars and parlor cars run and are operated by such railroad companies on their railroads from other States into Florida and from Florida into other States, and some of your orator's said sleeping cars and parlor cars run and are operated by such railroad companies between points wholly within the State of Florida. That in such sleeping cars of your orator your orator furnishes sleeping accommodations and seats, and in such parlor cars your orator furnishes reserved and specified seats: to-wit, chairs, and in some of its sleeping and parlor cars your orator furnishes food and refreshment, all such sleeping accommodations, seats, chairs and food and refreshment being furnished to the passengers of the railroad companies travelling in such cars of your orator. That your orator also furnishes to some of the railroads running from other States into the State of Florida and from Florida to other States and to one railroad running wholly within the State of Florida, dining cars which your orator leases outright at a monthly rental to such railroad companies,

4 in which food and refreshment is served and furnished to passengers. That your orator does not and did not at any time during the year ending October 31st, 1914, furnish or operate any dining cars in the State of Florida for its own account, or on account of which it was entitled to the gross receipts, or on account of which it was entitled to the profits, if any, or bore the losses, if any.

## III.

That your orator now has and for more than ten years last past has had within the State of Florida cars of the kind hereinbefore referred to, running in, into and out of the State of Florida as hereinbefore stated, and that some of said cars have, during all of said time, been property of your orator within the State of Florida and subject to such property taxation therein as might be lawfully provided for by the Legislature of said State of Florida.

By Section 48 of Chapter 4115 of the Laws of Florida of 1893, approved June 2nd, 1893, entitled, "An Act for the collection and assessment of revenue", it was provided for the taxation of the property of railroad companies, and of sleeping and parlor car companies, and that sleeping and parlor car companies should on or before January 1st, 1894, and annually thereafter, report to the Com-troller of said State of Florida the total amount of their gross receipts derived from business done between points in that State, and at the same time should pay into the State Treasury the sum of $1.50 upon each $100.00 of such gross receipts, with provisions that if the report

should not be made, the Comptroller should estimate the gross receipts, add ten per cent. to the amount of the taxes as a penalty and proceed to collect the tax with costs and penalties the same as other delinquent taxes are collected; that in the year 1895 the Legislature of Florida re-enacted all of the provisions for taxation of the property of railroad and sleeping and parlor car companies, as above stated, in and by Section 47 of Chapter 4322, being an act entitled "An Act for the assessment and collection of revenue", approved
5 June 1st, 1895. That no other tax upon the property of sleeping and parlor car companies or upon such companies was ever provided by the Laws of the State of Florida until the year 1907, but said tax on gross receipts was provided, paid, accepted and credited by the State of Florida as a general tax and in lieu of all other taxes upon sleeping and parlor car companies and the property of such companies; that by Section 46 of Chapter 5596, approved June 18th, 1907, entitled "An Act relating to tax assessments and collection of revenue", it was provided for the assessment and taxation of the property of railroad companies and sleeping or parlor car companies, including sleeping and parlor cars of each of such companies, by ad valorem tax, and it was therein and thereby made the duty of the Comptroller, Attorney General and State Treasurer to assess all such property of railroad companies and sleeping and parlor car companies from the best information they could obtain, specifying the value thereof in each County, and that the value of the locomotives, engines, passenger, sleeping, parlor, freight, platform, construction and other cars and appurtenances should be apportioned by the Comptroller pro rata to each mile of main track, branch, switch, spur track and side track, and that the proportionate value thereof should be assessed in and by the counties, cities and towns through which the railroad ran, as provided by law, and that upon the value thus ascertained and apportioned, taxes should be assessed, the same as the property of individuals. That in and by said Section 46 railroad companies and sleeping and parlor car companies and the property of each such companies is and are treated in common and the cars of sleeping and parlor car companies are treated the same as cars of railroad companies and as the same character of property used in transporting passengers by railroad and are subjected to the same ad valorem taxes. That by Section 47 of the same chapter there was re-enacted in all the material particulars and substantially word for word the provisions heretofore contained in said statute, of
6 1893, and in said statute of 1895, providing for a tax to be computed upon the gross receipts of sleeping and parlor car companies at $1.50 on each $100.00 thereof, as hereinbefore set forth, and thereby provided for a further tax upon the property of sleeping car and parlor car companies in addition to the ad valorem tax thereon provided in and by said Section 46.

That in said year 1907 the Legislature of said State of Florida also enacted Chapter 5597, entitled "An Act imposing license and other taxes, providing for the payment thereof, and prescribing penalties for doing business without a license, or other failure to comply with the provisions thereof", and therein and thereby provided for a

license tax upon companies engaging in sleeping car or parlor car business unless a State license therefor shall have been procured, and person, firm or corporation, from engaging in the transaction of said business unless a State licene therefor shall have been procured, and also provided therein for the imposition of further license taxes by the county, city or town in which the business should be engaged in. That the license fees therefor as herein provided were as follows, for engaging in the business of: Sleeping and parlor cars, $25 for each car; With buffet, $40 for each car.

That each of said statutes of 1907 hereinbefore referred to from the time of their enactment remained in force until the year 1913 when the license tax provision for sleeping and parlor car companies was amended by the Legislature of Florida and is now Section 44 of Chapter 6421 of the Laws of 1913 entitled "An Act imposing licenses and other taxes, providing for the payment thereof, and prescribing penalties for doing business without a license, or other failure to comply with the provisions thereof." That said Chapter 6421 prohibits any person, firm or corporation from engaging in the transaction of said business unless a state license therefor shall have been procured. Said Section is as follows:

7 "Sleeping and Parlor Car Companies; Licenses.

Sec. 44. Sleeping and Parlor Car Companies operating any such cars on or over any railroads or any part of said railroads in this State, shall on the first day of October of each year, pay to the Comptroller a license tax of five thousand five hundred dollars ($5,500.00) which shall be paid into the State Treasury by the Comptroller to the credit of the General Revenue Fund. Provided that no other County or Municipal license taxes shall be required of any such company under this Section. The Superintendent of any Sleeping and Parlor Car Company violating the provisions of this Act, and any person who acts as agent for any such company, before it has paid the above license tax payable by said company, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished respectively by a fine not more than five hundred ($500.00) dollars, or by imprisonment in the County jail not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court."

No County or Municipal License Required.

Penalty.

That said Section 44 did not and does not, nor does said Chapter 6421, nor does any other statute of the State of Florida, provide that a further tax based on gross receipts or otherwise should or shall be required for the privilege of engaging in the sleeping car or parlor car business, but, on the contrary, Section 5 of said Chapter 6421, laws of 1913, expressly provides "that only one State license tax shall be required in any case unless otherwise provided in this Act."

That the provision of said Section 46 of Chapter 5596 of the laws of 1907 for the taxation of the property of railroad and sleeping and parlor car companies by ad valorem is still in force. And the provisions of Section 47 of said last named Chapter 5596, laws
8 of 1907, providing for gross receipts tax of sleeping and parlor car companies was by the Legislature of Florida of 1913 re-enacted, with some slight change with respect to notice, but in all essentials the same as section 47 of Chapter 5596 of the laws of 1907, and is now Section 45 of Chapter 6421 of the laws of 1913.

## IV.

That on or about the 1st day of October, 1907, and during the year next thereafter, and before the first day of October, 1908, your orator paid to the proper officer, as specified in said Chapter 5597, license taxes for the transaction of its business which is hereinbefore described during said year, as provided in and by said Chapter 5597, and received from the officer designated in said Chapter written licenses therefor issued by the Comptroller of said State, substantially, if not exactly, as in said Chapter provided. And likewise, in each year thereafter, beginning on the first day of October your orator has paid license taxes as provided in and by said Chapter 5597, and as hereinbefore set forth with respect to the license taxes paid in the year beginning October first, 1907, and has in each of said years thereafter received licenses for transacting business in each of said years, issued in and for each of said years respectively, as hereinbefore set forth, with respect to said year beginning October first, 1907, until the change of the provisions of law with respect thereto by the enactment of said section 44, Chapter 6421, Laws of Florida for 1913. And your orator has also paid the license taxes imposed against it for the year beginning October 1st, 1913, amounting to $5,500.00, as provided by said Section 44 of Chapter 6421, laws of 1913, and upon paying the same was licensed to conduct its business as provided by said Chapter 6421.

That in the year 1908, the first tax year after the taking effect of said Chapter 5396, laws of 1907, your orator's cars and other
9 property in the State of Florida, including all the proportion to which the state was entitled to such of the cars of your orator as were used partly within and partly without said State, was assessed by the Comptroller, Attorney General and State Treasurer of said State of Florida, as provided in Section 46 of Chapter 5596, Laws of 1907, and your orator paid fully all the State, County, City and Town taxes which were levied thereon, and in each year thereafter, including the year 1914, the said property and all of the property of your orator in said State of Florida, including a proportion of your orator's cars and other property used partly within and partly without said State of Florida, has been assessed by the Comptroller, Attorney General and Treasurer of said State, and your orator has likewise paid all the State, county, city and town taxes levied thereon.

That the amount of said ad valorem taxes for the year ending December 31st, 1913, was $8,447.39, and for the year 1914, $11,-

155.05, except and not including Leon County, for which, your orator is informed by the Tax Collector of said County, a bill cannot be furnished before some time in January, 1915.

## V.

That ever since the passage of the Act of the Legislature hereinbefore referred to, enacted in 1893, your orator duly and successively made reports of its gross receipts thereunder and under said Act hereinbefore set forth, enacted 1895, and continued to pay the taxes computed on such gross receipts after the Act of 1907 was enacted up to and including the year ending October 31st, 1908, the taxes for which year were paid on the 3rd day of December, 1908, and that thereafter your orator became and was advised that the imposition of said gross receipts taxes, as provided in said Section 47 of Chapter 5596 of the laws of 1907, was not legal and was not constitutional under the Constitution of the State of Florida and that the statute providing therefor was not constitutional either under the Constitution of said State or the Constitution of the United States, and your orator, acting under the advice of counsel has not since that time made the reports or paid the taxes computed upon its said gross receipts except as hereinafter set forth.

That on or about the 3rd day of January, 1911, the then Comptroller of said State of Florida demanded of your orator that it immediately make the reports and pay the taxes upon its gross receipts which he, the said Comptroller, claimed was due and payable under the statute providing therefor on the first days of January, 1910 and 1911, and that if said payments were not immediately made, the State Comptroller would issue his warrant to the Sheriff of a County in Florida commanding him to collect said taxes by a levy upon and sale of the property of your orator, and thereupon your orator filed in the then United States Circuit Court for the Northern District of Florida its bill of complaint therein and thereby prayed the court to restrain the State Comptroller from taking any proceedings for the collection of said taxes, and the said court thereupon on said 31st day of January, 1911, made its order, temporarily restraining the State Comptroller from taking said proceeding and that on the 11th day of February 1911, the said cause came on to be heard before said court upon an application for an injunction pendente lite, and the said court then heard, and made an order denying said application for the reasons therein stated. That an appeal from said order was thereafter taken to the Supreme Court of the United States where the same was disposed of and said appeal dismissed as hereinafter more fully stated.

That after the entry of said order by the then United States Circuit Court for the Northern District of Florida and on February 28th, 1911, the said Comptroller again in writing demanded the reports and taxes for said years, whereupon on the 3rd day of March, 1911, your orator filed the reports for each of said years to-wit: the year ending October 31st, 1909, year ending October 31st, 1910, under its protest and did not at the time of making said reports or otherwise,

except as hereinafter stated, pay the taxes claimed to be due
11 thereon, and that said State Comptroller, on the 13th day of March, 1911, issued his warrant to the Sheriff of Duval County, Florida, commanding him to levy and sell the property of your orator to satisfy the amount claimed to be due as taxes for said two years, amounting to $6,971.38, and said Sheriff, thereafter and on the 15th day of March, 1911, levied upon the property of your orator and took into his physical possession one parlor car named "Grace" for the payment of said sum, and threatened to sell the same, and your orator thereafter and on the same day, to release its property from said seizure and to prevent a sale thereof, and obtain possession thereof for use in its said business, paid to said Sheriff said sum of $6,971.38, together with $30.00 costs.

That your orator afterwards and on the 18th day of December, 1911, filed its further bill in the then United States Circuit Court for the Northern District of Florida against A. C. Croom, then Comptroller of said State, and said W. V. Knott, then Treasurer of said State, as such Comptroller and Treasurer, respectively, therein and thereby praying the said court to restrain and enjoin the State Comptroller from taking any proceedings to collect the taxes computed upon your orator's said gross receipts, which he, the said Comptroller, would claim to be due on the first day of January, 1912, and also praying that the said Treasurer be decreed to repay to your orator said sum of $6,971.38, claimed to have been due as taxes, and $30.00 costs, all of which was paid by your orator to said Sheriff of Duval County, as hereinbefore stated. And upon the 21st day of December, 1911, said last named cause came on to be heard before the then United States Circuit Court for the Norther- District of Florida on an application for an injunction pendente lite, as prayed for in the bill, which application was then and there on said last named day denied for the reasons stated in the order of Court then entered, and that your orator appealed from said order to the Supreme Court of the United States. That said last named appeal was thereafter and on the 10th day of February, 1913, advanced to be argued with the former appeal hereinbefore referred to, and said two appeals
12 were thereafter and on the — day of November, 1913, argued and submitted to said Supreme Court, and on the 22nd day of December, 1913, said Supreme Court decided and held that by reason of the death of said defendant Croom, which had been suggested to said court, that the court had no jurisdiction to hear and determine said appeals, and that the appeals be dismissed for want of a proper appellee to stand in judgment upon the only question brought to that court, and it was so ordered by the Court.

That thereafter and on or about —— —, 1914, your orator by leave of court filed in said United States District Court its supplemental bill of complaint in said last named cause (which involved the taxes claimed to be due from your orator on the first day of January, 1912, for the year ending October 31st, 1911) against the defendant W. V. Knott, as Comptroller of said State of Florida, and therein prayed for the same relief as was prayed for in your orator's original bill in said cause, and at the same time your orator filed in

said United States District Court its original bill of complaint against said defendant W. V. Knott, as such Comptroller and therein prayed the court to likewise restrain the defendant with respect to the taxes claimed to be due from your orator on the first day of January, 1914, and said supplemental bill and said original bill last named came on to be heard upon the application of your orator for an injunction pendente lite, before three judges sitting therein, two of whom were Circuit Judges; the application of your orator in each of said causes being denied, your orator appealed to the Supreme Court of the United States from the orders denying the injunction, and said District Court ordered that the appeals act as a supersedeas upon payment into Court by your orator of the amounts of taxes claimed to be due for the two years involved in said two cases, and said amounts were paid into said court on or about —— —, 1914. Thereafter said appeals came on to be heard together in the Supreme Court of the United States and were argued and submitted, and on the second day of November, 1914, said Supreme Court decided against your orator on said appeals, but did not, and expressly declined to decide the question raised therein as to whether the statute under which
13 said taxes were assessed was valid under the State Constitution of Florida, and held that the question must be decided finally by the state court; 235 United States Reports, page 23.

## VI.

Your orator further shows unto your Honor that but two kinds of taxes are permitted under the Constitution of Florida, namely, ad valorem taxes and license taxes, and that the Supreme Court of said State has so held specifically. That prior to the enactment of said laws of 1907 hereinbefore referred to said tax computed on gross receipts was the only tax provided for sleeping and parlor car companies or their property and that under the Statute of 1893 hereinbefore referred to and under the statute of 1895 hereinbefore referred to, said tax was imposed and collected by the authorities of said State and paid by your orator as a tax upon its property and in lieu of other taxes upon its property, and under the statute of 1907, (Chapter 5596) up to and including the year ending October 31st, 1908, said tax computed on gross receipts was in each year imposed and collected by the authorities of said State, and paid by your orator, as an additional tax upon its property, and that said gross receipts taxes were never imposed, collected, received, receipted for or treated by the authorities of said State as a license tax and were never credited on the books and accounts of said State as a license tax.

A copy of the receipt of the State Comptroller for the said tax paid by your orator December 3rd, 1908, for the year ending October 31st, 1908, and computed on the gross receipts for said year issued under said Statute of 1907, marked "Exhibit A" and a copy of the receipt for the year ending October 31st, 1906, marked "Exhibit B", issued under said Statute of 1895, are hereby attached and hereby referred to.

That the license taxes paid by your orator in the year 1913 as here-

inbefore alleged were for a license for one year which ran for one year from October 1st, 1913, to October 1st, 1914, for which yearly period your orator was licensed to conduct its business. And your orator here repeats its allegations hereinbefore made with respect to the provisions and wording of Section 44 of Chapter 6421 of the laws of 1913, and further alleges that it is provided in and by
14 Section 5 of said Chapter that only one State license shall be required in any case, unless otherwise provided in that Act (the Act being said Chapter 6421); and your orator further alleges and shows that the Comptroller of the State of Florida is not, nor is any other official of said State or acting on behalf of said State or by authority of the laws thereof authorized or empowered to make any assessment or impose any tax upon the gross receipts of your orator as and for a license tax, nor authorized to impose any other or further license taxes upon your orator for the transaction of its business or upon its business than the license taxes provided in and by said Section 44 of said Chapter 6421, laws of 1913, and that it is not provided in and by said Section 45 or elsewhere in the laws of Florida, that any other license, or any license, should be issued to a sleeping or parlor car company for or on account of the payment required by said Section 45, or that any privilege or permission should be granted to such company in consideration of such tax, or that such company should have and derive any privilege, permission or advantage whatsoever by reason of payment of the tax provided in said Section 45 that it would not otherwise have; the conduct of sleeping and parlor car business is not prohibited unless said tax shall be paid, nor is the right of your orator or any other person or corporation to do a sleeping or parlor car business made in any way dependent upon the payment of said tax on gross receipts, in any Statute or any provision of any statute of the State of Florida. And your orator is further advised by counsel, that, as a matter of law, said Chapter 6421 of the laws of 1913, does not provide for the payment of a license tax on the gross receipts of sleeping and parlor car companies and that the tax on gross receipts provided for by Section 45 of said Chapter 6421 is not a license tax for the privilege of conducting business or for any privilege or permission that the State of Florida can or may lawfully grant and is not in fact or in law a license tax for any purpose whatsoever, and that the provisions of said Section 45 are, and all proceedings thereunder are, and any tax imposed thereunder will be, an attempt to impose and collect another and further and additional tax upon the property of
15 such companies over and above the ad valorem tax, and as applied to your orator is an attempt to tax the property of your orator twice for substantially the same period of time.

## VII.

And your orator further shows that, as hereinbefore alleged, Section 46 of Chapter 5596 of the laws of Florida for 1907, which is still in force, provides for the return and taxation of the cars and other property of railroad companies and of sleeping and parlor car com-

panies and thereunder the cars of sleeping and parlor car companies are treated and subjected to the same ad valorem tax as cars of railroad companies and are treated as the same character of property used in furnishing transportation service on carriers by railroad; that the cars of your orator in Florida are furnished by your orator to railoads running in or into and out of the State under contracts as hereinbefore alleged and are delivered into the possession and control of the railroad companies and are by said railroad companies operated and used for the transportation of their passengers desiring sleeping or parlor car accommodations on their trains, and said cars are at all times while in said State in the actual possession and control of said railroad companies and form in fact a part of the transportation equipment of such railroad companies, and that of the revenue earned therein by far the greater part and on the average about eighty (80) per cent is revenue of the railroad company for transportation and about twenty (20) per cent. is revenue of your orator for the accommodations and service in said cars furnished by your orator; that as hereinbefore alleged your orator in certain of its cars known as "buffet cars", which are run in the passenger trains of the railroads to which they are furnished, as hereinbefore stated, your orator furnishes to passengers while they are being carried by the railroad companies, in, into and out of the State of Florida, food and refreshment; that said railroad companies, and at least one railroad company running its trains from other states into the State of Florida and from the State of Florida to other States, has in its trains dining cars, and did during a portion of the year 1914, have dining
16 cars of your orator which were leased outright to said railroad company, and during other portions of said year, dining cars owned by the railroad company and operated by it in which said railroad company furnished to its passengers within the State of Florida food and refreshment of precisely the same character as the food and refreshment furnished by your orator as aforesaid in its buffet, sleeping and parlor cars; that at least one other railroad had, during the year 1914, and ran in its trains entirely within the State of Florida, dining cars in which food and refreshment was and were furnished to the passengers travelling in said trains, of precisely the same character as the food and refreshment furnished by your orator as hereinbefore set forth; that said last named dining cars were leased outright by your orator to said railroad company and operated for and on account of said railroad company, and the gross receipts for such food and refreshment were collected for and on account of said railroad company, which under the terms of said lease was entitled thereto and to the profit if any and bore the loss, if any; that railroad companies and sleeping and parlor car companies in the State of Florida are required to pay the same ad valorem tax, to-wit, a tax on all their property, that each pays the ad valorem taxes on its property and in addition thereto each of such companies is required to pay a license tax for the privilege of conducting its business; the railroad license tax is ten dollars for each mile of its railroad track in the state and that of sleeping and parlor car companies is $5,500.00; that sleeping and parlor car companies in addition to the

ad valorem tax and the license tax as hereinbefore stated were and are required by said Section 45 of Chapter 6421, laws of 1913, to pay said tax of $1.50 on each $100.00 of their gross receipts.

That at least one railroad company in the State of Florida owns and operates parlor cars for the seats in which a charge is made in addition to the ordinary carriage charge; that said railroad company is not required to pay said tax or any tax on the receipts for said seats, although your orator is required by said statute to pay a tax on its receipts from seats furnished passengers of the railroads in its parlor cars, in addition to the ad valorem tax on its cars and the license tax as hereinbefore alleged.

17 That your orator, in addition to the ad valorem tax on its cars and the license tax as hereinbefore alleged, is required by said statute to pay said tax on its receipts for food and refreshment furnished by it in its cars to the passengers of the railroad companies and that the railroad companies are not required by said statute or any statute of Florida, to pay said tax or any tax upon its and their receipts for the same kind of food and refreshment furnished either in its own dining cars or in the dining cars of your orator when leased outright to and operated for and on account of the railroad company to which it is leased and which makes the profit of the business done therein.

That the sleeping and parlor cars of your orator furnished to railroad companies are used and employed in carrying the passengers of the railroad companies and the berths or seats therein are used by such passengers while being carried, the railroad company receiving the charge for carriage and your orator receiving the charge for the berth or seat occupied by the passenger; that in addition to the ad valorem tax on its said cars and the license tax as hereinbefore alleged, your orator is by said Section 45, Chapter 6421, laws of 1913, required to pay a tax on its portion of the receipts for said combined service of carriage and seat or berth furnished to passengers, but the railroad company is not required by said statute, or by any statute of the State of Florida, to pay the same or any tax on its portion of the receipts therefor.

That by the provisions for the taxation of sleeping and parlor car companies in said Section 45 of Chapter 6421 of the laws of Florida for 1913, a different rule was and is provided from that provided by the laws of Florida for ascertaining and imposing taxes upon other property within the State, and different from that provided for ascertaining and imposing taxes upon property and receipts from the property of railroad companies devoted to the same uses and purposes as the property of your orator and under the same conditions in all respects except ownership, and upon the business of railroad companies of the same character and conducted in the same manner and under the same conditions, as the business of your orator; that neither the constitution nor

18 the laws of Florida permit the classification of property for the purposes of taxation by ownership, kind or use, or otherwise than as provided and limited in the constitution, which is property subject to taxation and property to be exempt from taxa-

tion, and, that the Legislature of Florida has not classified or attempted to classify the property of said State for the purposes of taxation and that there is no law of said State of Florida under which the same is or can be so classified, except as in said constitution classified, as hereinbefore stated, but all property subject to taxation must be taxed by uniform and equal rate and at a just valuation. That the Legislature of said State, in enacting the provisions of said Section 45 of Chapter 6421 of the laws of 1913, and the Comptroller of said State in taking proceedings thereunder, for the collection of the taxes therein provided, does and will in fact impose taxes upon your orator's property by a rule and rate which is different from the rule and rate under which other property within the State of Florida is assessed and taxed, and that said Section 45 does not provide for the imposition of taxes upon the property of your orator by uniform and equal rate and just valuation or upon any valuation or by any uniformity or equality, and thereby the provisions of Section 1 of Article 9 of the Constitution of Florida are violated and a material and substantial discrimination is made against your orator and its property. That said Section 45 of Chapter 6421, laws of 1913, provides for the imposition of a tax which would and will, if enforced against your orator, deprive your orator of its property without due process of law in violation of Section 12 of the declaration of rights in the Constitution of Florida and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States; and would and will be a denial of the equal protection of the laws to your orator, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that your orator's said property would not be taxed by uniform rate and just valuation, nor as to said tax computed on gross receipts, upon any valuation or by any uniformity or equality, but that your orator's property would be taxed twice; once by ad valorem based upon the valuation thereof and again by computing an additional tax thereon at the rate
19 of $1.50 on each $100.00 of the receipts of said property from the business done therewith and therein, while the property of railroad companies in the State of Florida devoted to the same use as your orator's, under precisely the same conditions except ownership, is not, nor is any other property in the State of Florida subjected to said tax or to such double taxation.

VIII.

That if said Section 45 of Chapter 6421 of the laws of 1913 did provide for a license tax either by itself or in connection with the license taxes provided in and by said Section 44 of the same Chapter, then your orator alleges and charges that the same was not based upon a just and reasonable classification of persons or of property and business for the purpose of license and the imposition of license taxes, but was an unjust and arbitrary exaction imposed upon sleeping and parlor car companies engaged in furnishing accommodations and service in their cars to persons who

travel therein on the railroads of Florida and in connection with the transportation of such persons, and was and is not imposed upon railroad companies owning the same kind of property devoted to the same use and in the same business and service as the property and business of your orator, nor upon any person or any other company or companies or class of companies, nor upon the earnings or receipts of any railroad company or other person or company; and if said Section 45 did provide for a license tax then a different rule was thereby provided for the license and license taxes of sleeping and parlor car companies from the rule provided for individuals and for other companies, and for railroad companies conducting the same kind of business in and with the same kind of property. And that thereby sleeping car and parlor car companies were and your orator was and is by said statutes and rule, materially and substantially discriminated against and a tax computed upon gross receipts of sleeping and parlor car companies and upon the gross receipts of your orator as provided in said Section 45 would, if enforced against your orator, deprive your orator of its property without due process of law and would be a denial of the equal protection of the laws to your orator, in violation of the Constitution of the State of Florida and of the Fourteenth Amendment to the Constitution of the United States, as hereinbefore set forth.

## IX.

That your orator is advised and believes that there is no statute of the State of Florida under and by which taxes claimed to be illegal may be paid under protest and an action had to recover the same or to recover any money paid or alleged to have been paid for illegal taxes, and that the Supreme Court of the State of Florida has heretofore decided that taxes so paid cannot be recovered from the official to whom paid even though such official has not paid the money over to the State, and for that reason your orator is deprived by the laws of Florida of a judicial hearing upon the amount and legality of said claim for taxes and that your orator has under the laws of Florida no remedy at law. And your orator is advised that neither the State Comptroller nor any other official of Florida receiving taxes is responsible personally to the tax-payer therefor or for property seized to satisfy the tax, even though such taxes shall thereafter be held illegal. And your orator is advised that neither the State Comptroller nor any other official of Florida receiving taxes is responsible personally to the tax payer therefor or for property seized to satisfy the tax, even though such taxes shall thereafter be held illegal.

## X.

That your orator has no property in the State of Florida in addition to its cars and their equipment, except a small quantity of office desks and furniture of small value and which would be inadequate to satisfy the amount provided by said Section 45 to

have been due and payable as taxes on the first day of January, 1914. That your orator's cars and equipment thereof within the State of Florida are and is for the most part employed in interstate commerce and that both its cars and equipment so employed in interstate commerce and its cars and the equipment thereof employed for the time being between points wholly within the State of Florida are subject to the diretcion of the railroad com-

21 panies to whom the same are furnished and employed are liable to employment at any time upon interstate lines and that said cars which are for the time being employed between points wholly within the State of Florida are also engaged in interstate commerce and in carrying passengers travelling from other States into Florida and from Florida into other States, and that all of your orator's cars which run in the State of Florida are employed in and by the railroads in transporting their passengers in interstate commerce, and therein your orator furnishes to such interstate passengers, as well as passengers travelling between points wholly within the State, the accommodations in such cars as hereinbefore described. That the only property your orator has in Florida sufficient to satisfy the claim for such taxes as said Section 45 provides to be due and payable January 1st, 1914, is and would be a sleeping car or cars or a parlor car or cars and if any such car or cars of your orator were to be seized on warrant or by direction of the defendant, as such State Comptroller, on a claim for such taxes such car would be taken possession of by the Sheriff of the County to whom such warrant would be directed and taken into his possession and held and sold to satisfy such claim and your orator would be unable to comply with its contract with the railroad to which such car had been furnished and in whose possession it was at the time of such seizure, for the reason that the State of Florida being remote from the place and places where your orator has and necessarily keeps its extra and reserve cars for use in emergencies your orator would not be able without considerable delay to obtain and supply another car or cars to take the place of the car or cars so seized, nor in time to prevent serious inconvenience arising to passengers travelling interstate or to enable your orator to furnish to the railroad company a car or cars to take the place of the car or cars so seized, for use in the transportation of the railroad company's passengers and to enable your orator to furnish to such passengers of the railroad the accommodations in such cars which the Act to Regulate Commerce, approved February 28th, 1887, and Acts amendatory thereof, requires

22 your orator as a sleeping car company to furnish for use in accordance with its tariffs duly filed and on file with the Interstate Commerce Commission of the United States, and your orator would thereby be deprived of its property and the use thereof and would be irreparably injured in an amount which cannot be definitely estimated or determined. And your orator further alleges that it has no car in the State of Florida and no car which can or will be in the course of business or otherwise be in the State of Florida which is of less value than the cars of your orator assessed

for ad valorem taxes in the year 1914 by the Comptroller, Attorney General, and State Treasurer of said State of Florida as alleged in paragraph IV of this, your orator's bill of complaint, and that the lowest valuation per car fixed and assessed on any of your orator's cars by said Comptroller, Attorney General and State Treasurer in said year 1914, was $8,000.00. That the amount of tax which it is provided in and by said Section 45 should be due and payable on the first day of January, 1915, exceeds the sum of $6,000.00; that your orator has made to said defendant as such Comptroller, a report of its gross receipts from business done between points in the State of Florida for the year ending October 31st, 1914, as required by said Section 45, but has not paid the tax at said prescribed rate or any tax thereon. That in order to avoid and relieve itself from the penalty provided in said Section 45 for failure to make report, your orator made said report, but under the protest that said Section 45 is not authorized by the Constitution of the State of Florida, but on the contrary is inhibited by the State Constitution and is unconstitutional, illegal and void, denies the equal protection of the laws to the companies named therein and is not due process of law; that the enforcement of the tax provided for by said Section against your orator would take its property without due process of law, and that no valid tax can be imposed thereunder; that said defendant as such Comptroller now demands that the tax at said rate prescribed by said Section 45, on your orator's gross receipts so reported, be paid, and that, if not paid on or before the — day of —, 1915, he, the defendant, as such Comptroller, will proceed to enforce the provisions of
23 said Section 45, with respect thereto and to collect the taxes therein provided for, in which case your orator will be obliged, as hereinbefore set forth, to either pay the full amount claimed for said taxes with costs, or to suffer its property to be seized and sold therefor, and in any event your orator will be irreparably injured in a sum greatly in excess of $3,000.00 and more than $6,000.00.

## XI.

And your orator further shows unto your Honor that, in order that the State of Florida may receive any and all sums which may be found to be lawfully due from your orator under the provisions of said section 45, your orator hereby offers to make a report to this court under the order thereof, as your Honor may and shall direct, showing the amount of gross receipts of your orator as defined in said Section 45 and to pay into this Honorable Court the amount which said Section 45 provides should be payable on the first day of January, 1915, to be either held in this Honorable Court to await the ultimate determination of this cause and thereupon paid in whole or in part to the Treasurer of the State of Florida or repaid to your orator as may be ultimately determined, or, if your Honor shall so direct, that the sum or such part thereof as your Honor may and shall direct, be immediately paid over to the Treasurer of said State upon such terms, under the direction of your Honor, as shall insure and make certain the repayment to

your orator of the whole or such part thereof as may and shall be ultimately determined to be illegal, to the end that the State of Florida shall not be deprived of its just and lawful dues and that at the same time your orator may and shall be protected from unjust and illegal taxation.

## XII.

For as much as your orator has no adequate remedy at law and can have no adequate relief except in a court of equity, and to that end therefore, your orator prays:

24 1st. That said Section 45 of Chapter 6421 of the laws of Florida of 1913 may be declared to be unconstitutional and void and any and all taxes claimed to be due from and payable by your orator thereunder as hereinbefore set forth, and which said Section 45 provides shall be due and payable on the first day of January, 1915, be declared to be illegal and void.

2nd. May it please your Honor to grant unto your orator a writ of injunction to be issued out of and under the seal of this Honorable Court commanding and enjoining and restraining the defendant W. V. Knott, as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control or under the direction or control of his successor or successors in said office from estimating, levying or assessing any tax against your orator upon the gross receipts of your orator so reported to said Comptroller as set forth in paragraph X of this, your orator's bill of complaint or otherwise, on which a tax is or may be claimed, to be due and payable under said Section 45 on the 1st day of January, 1914, and from adding any penalty and from delivering any warrant directed to any Sheriff of any County of the State of Florida requiring such Sheriff to collect by levy and sale of property the amount of said taxes claimed to be due or any taxes and from otherwise and in any manner attempting to collect or enforce collection of any such tax until the final determination of this cause, and that thereupon said injunction may be made perpetual and final by the decree of this Honorable Court, and that in the meantime and until a decision can be had upon your orator's motion to be made herein, for the injunction herein prayed for during the pendency of this cause, a restraining order to be granted restraining the acts herein sought to be enjoined; your orator hereby alleging in that behalf that there is danger of irreparable injury of the kind and character hereinbefore set forth which your orator here repeats and alleges would arise from delay if said acts should not be restrained until your orator's motion for an injunction can be heard.

3rd. That your orator herein have such order and further

25 relief as may seem to your Honor just and equitable.

May it please your Honor to grant unto your orator the State's most gracious writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said W. V. Knott, as Comptroller of the State of Florida, commanding him upon a day certain therein to be named and under a certain penalty

to be and appear before this Honorable Court then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made in this cause, and complainant will ever pray.

THE PULLMAN COMPANY,
By JNO. C. BURROWES,
*District Superintendent.*

JOHN E. HARTRIDGE,
*Of Counsel.*
JOHN E. AND JULIAN HARTRIDGE,
*Solicitors for Complainant.*

STATE OF FLORIDA,
*County of Duval:*

Personally appeared before me, a Notary Public duly commissioned and qualified to act in and for the State and County aforesaid, J. C. Burrowes, who, being duly sworn, deposes and says that he is District Superintendent of the Pullman Company, the complainant named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof and that the facts therein stated upon complainant's information and belief this affiant believes to be true, and when alleged of his own knowledge he knows to be true.

JNO. C. BURROWES.

Subscribed and sworn to before me this 13 day of January, 1915.
[SEAL.] E. M. RORABECK,
*Notary Public, State of Florida at Large.*

My Commission expires Dec. 15, 1915.

26 EXHIBIT A.

$1,405.26 No. 4240.

Treasury Department, State of Florida,
Comptroller's Office,

TALLAHASSEE, FLA., Dec. 3", 1908.

Received of the Pullman Company, of Chicago, Ill., *County*, the Treasurer's receipt for Fourteen Hundred Five & 26/100 Dollars on account of Heads of Taxation, as shown in the following statement, viz:

| Year when assessed. | License tax. | General revenue. | General school one mill tax. | Pension tax. |
|---|---|---|---|---|
| ..... | ..... | 1,405.26 | ..... | ..... |

| State board of health tax. | Commission tax. | Department of Agriculture. | Total. |
|---|---|---|---|
| ..... | ..... | ..... | 1,405.26 |

Sleeping car tax, to Oct. 31st, 1908. Chapter 5596, Laws of Fla.

A. C. CROOM, *Comptroller.*

EXHIBIT B.

$1,287.18 No. 3612.

Treasury Department, State of Florida,
Comptroller's Office,

TALLAHASSEE, FLA., Nov. 27", 1906.

Received of the Pullman Company of Chicago, Ill., *County*, the Treasurer's receipt for Twelve hundred eighty-seven & 18/100 Dollars on account of Heads of Taxation, as shown in the following statement, viz:

| Year when assessed. | License tax. | General revenue. | General school one mill tax. | Pension tax. |
|---|---|---|---|---|
| ..... | ..... | 1,287.18 | ..... | ..... |

| State board of health tax. | Commission tax. | Department of Agriculture. | Total. |
|---|---|---|---|
| ..... | ..... | ..... | 1,287.18 |

Sleeping car tax to Oct. 31st, 1906.

A. C. CROOM, *Comptroller.*

27 On the 14th day of January, 1915, the following Certificates of disability of Judge Malone was filed:

STATE OF FLORIDA,
*Leon County:*

I, the undersigned Clerk of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, do hereby certify that the Honorable John W. Malone, Judge of said Circuit is unable, by reason of sickness, to discharge any duty whatsoever pertaining to his office.

In witness whereof, I have hereunto set my hand and affixed the seal of my said office, this the 14th day of January, A. D. 1915.

[SEAL.]

HENRY T. FELKEL,
*Clerk Circuit Court Leon County, Florida,*
By N. E. BASSETT, D. C.

On the 14th day of January, 1915, Notice of application for an injunction with acceptance of service thereon was filed in the words and figures following, to-wit:

In the Circuit Court, Second Judicial Circuit of Florida, in and for Leon County,

In Chancery.

THE PULLMAN COMPANY, Complainant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Defendant.

To W. V. Knott, as Comptroller, and Thomas F. West, as Attorney General, of the State of Florida:

You and each of you will please take notice that I will on Wednesday, the 20th day of January, A. D. 1915, at 10 o'clock A. M., or as soon thereafter as I can be heard, move before one of the Circuit Judges in and for Duval County, Florida, in Jacksonville, for an injunction to restrain and enjoin Hon. W. V. Knott, from making any estimate of the gross receipts of the Pull-
28 man Company derived from business done between points in the State of Florida, and from issuing and delivering or sending any warrant directed to any sheriff of the State of Florida, demanding him to collect by levy and sale any taxes that may be claimed under Section 45, Chapter 6421 Laws of Florida of 1913, and from seizing or taking into custody the cars or other property of the Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that the said W. V. Knott, as Comptroller, may claim to be due as a tax or penalty upon any amount, or estimated amount, of gross receipts under said Section 45, Chapter 6421, on the ground that the said Law is unconstitutional and void for the reasons stated in the Bill of Complaint, now on file in the office of the Clerk of the Circuit Court in and for Leon County, Florida.

JOHN E. HARTRIDGE,
JOHN E. AND JULIAN A. HARTRIDGE,
*Attorney- for Pullman Company.*

Service of a true copy of the foregoing notice received and accepted this the 14th day of January, A. D. 1915.

T. F. WEST.
W. V. KNOTT.

On the 23rd day of January, 1915, the defendant filed the following demurrer to the bill of complaint.

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.

In Chancery.

THE PULLMAN COMPANY, Complainant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida, Defendant.

The defendant herein demurs to the complainant's bill of complaint, and for cause of demurrer says:

29 1. That the complainant has not made out or stated such a case as will entitle it to the relief prayed or any relief in a court of equity.

2. That it appears from the allegations of complainant's bill that a court of equity has no jurisdiction in the matter or matters complained of.

3. That it appears from the allegations of complainant's bill of complaint that all the questions sought to be raised in this proceeding have been duly considered by the court taking jurisdiction of the principles and subject matter, and finally passing upon and adjudicating such questions.

T. F. WEST,
*Attorney General, Attorney for Defendant.*

January 23, 1915.

STATE OF FLORIDA,
*County of Duval:*

I, T. F. West, attorney for the defendant herein, do hereby certify that in my opinion the foregoing demurrer is well founded in law, and make oath that it is not interposed for the purpose of delay.

T. F. WEST.

Sworn to and subscribed before me this — day of January, A. D. 1915.

DANIEL A. SIMMONS,
*Circuit Judge.*

On the 29th day of January, 1915, the Court made the following order:

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.

In Chancery.

THE PULLMAN COMPANY, Complainant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Defendant.

This case coming on to be heard upon the motion of the
30 complainant for an injunction as prayed in the bill of complaint, and upon the demurrer of the defendant to the bill of complaint, and having been argued upon the part of the complainant by John E. Hartridge, and upon the part of the defendant by Honorable T. F. West, Attorney General of the State of Florida, and it appearing to the Court at the time of the hearing herein that the Honorable John W. Malone, Judge of the Circuit Court in and for Leon County, Florida, was unable by reason of sickness, to discharge any duty whatsoever, pertaining to his office, and the Court having given due consideration herein, and it being advised of its Judgment,

It is ordered, directed and decreed that the injunction prayed for be and the same is hereby denied.

It is further adjudged and directed that the demurrer of the defendant to the bill of complaint herein be and the same is hereby sustained.

It is further ordered, directed and decreed that the bill of complaint herein be and the same is hereby dismissed.

Done and ordered this 23rd day of January, 1915.

DANIEL A. SIMMONS, *Judge.*

On the 9th day of February, 1915, Complainant filed the following Assignments of Errors.

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.

In Chancery.

THE PULLMAN COMPANY, a Corporation,
vs.
W. V. KNOTT, as Comptroller of the State of Florida.

Assignments of Errors relied upon to Reverse the Decree of the Court entered on the 23rd day of January, 1915, in this case as above entitled.

31 1. The Court erred in refusing to grant the injunction as prayed in the bill of complaint in and by its decree dated the 23rd of January, 1915.

2. The Court erred in sustaining the demurrer of the defendant to the bill of complaint and in and by its decree and order dated January 23, 1915.

3. The Court erred in its decree and order dismissing the bill of complaint dated January 23rd, 1915.

4. The Court erred in signing and making the decree and order as it did on January 23rd, 1915.

Wherefore the appellant prays that the order and decree denying the injunction, sustaining the demurrer and dismissing the Complainant's bill may be reversed.

JOHN AND JULIAN HARTRIDGE,
*Solicitors and of Counsel for the Pullman Company.*

Due and legal service of a copy of the foregoing assignments of errors is hereby accepted this 9th day of February, 1915.

T. F. WEST,
*Solicitor & of Counsel for W. V. Knott.*

On the 9th Day of February, 1915, the Complainant Filed the Following Directions for Making up the Transcript of Record:

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.
In Chancery.

THE PULLMAN COMPANY, a Corporation,
vs.
W. V. KNOTT, as Comptroller of the State of Florida.

*Directions for Making Up the Transcript of Record.*

The Clerk will please make up the transcript of record in the above entitled case, duly certified under his hand and official seal, commencing to make up same on the first day of March, 1915, and in making up the transcript, he will observe the following directions:

32 Papers to be Copied in Full.

1. The bill of complaint, filed January 14th, 1915.
2. Certificate of the Clerk of the Circuit Court for Leon County as to the disability of Judge Malone.
3. Notice of application for injunction with acceptance of service thereon, filed January 5, 1915.
4. Demurrer of the defendant to the bill of complaint, filed January 23rd, 1915.
5. Order of court, denying the injunction, sustaining the demurrer and dismissing the bill, dated January 23rd, 1915.
6. Assignments of errors with proof of service thereon.
7. These directions with proof of service thereon.
8. Entry of appeal and certificate of entry of record.

The Clerk Will Recite the Following Papers.

1. Subpœna in Chancery and dates of filing of all papers where not recited.

JOHN E. AND JULIAN HARTRIDGE,
*Solicitors and of Counsel for the Pullman Company.*

Due and legal service of a copy of the foregoing directions to the Clerk is hereby accepted this 9th day of February, A. D. 1915.

T. F. WEST,
*Solicitor and of Counsel for W. V. Knott.*

On the 9th day of February, 1915, plaintiff entered its appeal, in the words and figures following, to-wit:

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.
In Chancery.

THE PULLMAN COMPANY, a Corporation,
vs.
W. V. KNOTT, as Comptroller of the State of Florida.

33 Now comes the plaintiff, the Pullman Company, a corporation, created, existing and being under the laws of the State of Illinois, and enters this its appeal to the Supreme Court of the State of Florida from the decree denying the injunction applied for, sustaining the demurrer of the defendant to the complainant's bill of complaint, and ordering the bill of complaint dismissed in the above entitled cause and which said appeal is hereby made returnable on the 25th day of March, A. D. 1915, of the January Term of said Supreme Court of the State of Florida, to convene in the City of Tallahassee, Florida, and the Clerk is directed to forthwith enter this appeal in the Chancery Book as required by law.

JOHN E. AND JULIAN HARTRIDGE,
*Solicitors and of Counsel for the Pullman Company.*

February 9, 1915.

STATE OF FLORIDA,
*County of Leon:*

I, Henry T. Felkel, Clerk of the Circuit Court in and for Leon County, State of Florida, do hereby certify that the above and foregoing "Entry of Appeal in the case of the Pullman Company, vs. W. V. Knott as Comptroller of the State of Florida" was filed for record in my office on the 9th day of February, A. D. 1915, and duly entered in Chancery Order Book No. 4, page 537 on the same day.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this the 9th day of February, A. D. 1915.

[SEAL.]

HENRY T. FELKEL,
*Clerk Circuit Court, Leon County, Florida,*
By N. E. BASSETT,
*Deputy Clerk.*

On the 14th day of January, 1915, subpœna in Chancery issued.
On the 14th day of January, 1915, service of subpœna was made on defendant.

34 STATE OF FLORIDA,
*County of Leon:*

I, Henry T. Felkel, Clerk of the Circuit Court in and for the County of Leon, State of Florida, do hereby certify that the foregoing pages, numbered from one to thirty-one inclusive, contain a correct transcript of the record of the order in the case of the Pullman Company, plaintiff, against W. V. Knott, as Comptroller of the State of Florida, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court this 17th day of February, 1915.

[SEAL.]

HENRY T. FELKEL,
*Clerk of the Circuit Court for the County of Leon,*
By N. E. BASSETT, *D. C.*

35 And thereafter, to-wit, on the 26th day of June, 1915, the said Supreme Court of Florida did render and file its Opinion and Order in the above-styled cause, the said Opinion being in the words and figures following, to-wit:

36 In the Supreme Court of Florida, June Term, A. D. 1915.

THE PULLMAN COMPANY, a Corporation, Appellant,
v.
W. V. KNOTT, as Comptroller, Appellee.

Leon County.

WHITFIELD, *J.:*

Suit was brought by the Pullman Company to enjoin the State Comptroller from enforcing, by levy upon cars of the complainant company, the payment of the sum of one dollar and fifty cents ($1.50) upon each one hundred ($100.00) dollars of the gross receipts of the company derived from business done between points in this State by such cars, such tax being by statute imposed upon all sleeping and parlor car companies in the State. Sec. 47 Chap. 5596 Acts of 1907; Sec. 45 Chap. 6421 Acts of 1913; Sec. 596*qq* Compiled Laws of 1914. Relief is sought upon the theory that the statute imposing such tax violates the State and Federal Constitutions in that it deprives the complainant of its property without due process of law and denies to it the equal protection of the laws. Injunction is asked on the ground that the remedy at law is inadequate. A demurrer to the bill of complaint was sustained and the bill dismissed. The complainant company appealed. As the Attorney General asks for a decision on the merits of the case, the right of the complainant to proceed in an equity forum will not be discussed, in view of the nature and uses of sleeping and parlor cars on which a levy is sought to be enjoined.

The argument is that since the Pullman Company pays a property tax upon its cars used in this State, and also pays "a license tax of
five thousand five hundred dollars ($5,500.00)" for doing
37 intrastate business in this State, the tax of $1.50 upon each
$100.00 of the gross intrastate receipts from the Pullman cars violates the taxation and due process of law provisions of the State Constitution, and the Fourteenth Amendment of the Federal Constitution. That the tax here complained of does not violate the Federal Constitution has been directly adjudicated in Pullman Company v. Knott, Comptroller, 235 U. S. 23, Sup. Ct. Rep. * * * It does not appear that the tax is an oppressive burden arbitrarily or otherwise illegally put upon the complainant. See Peninsular Casualty Co. v. State, 68, Fla. 411, South. Rep. * * *

License taxes are not required to be uniform; but under the constitutional authority to provide for levying a tax on licenses, the legislature may impose such purely license, occupation or privilege taxes as it deems proper when no property right that is secured by the constitution is thereby violated. No provision of the constitution forbids the imposition of license or privilege taxes on the right to do business in the State and also on the gross receipts of such business. Both of these exactions are in the nature of license or privilege or occupational taxes. See Afro-American Industrial & Benefit Ass'n of the United States v. State, 61 Fla. 85, 54 South. Rep. 383; Johnson v. Armour, 31 Fla. 413, 12 South. Rep. 842. The character and extent of taxes imposed are within the legislative discretion when constitutional limitations are not violated. By imposing a license tax as a condition precedent to the right to do intrastate business in the State and also a tax upon the gross receipts of such business, the legislature has not violated the constitution or exceeded its powers; and it is not material whether the two taxes are imposed by one or by different statutes enacted concurrently or at different times. The policy disclosed in the exactions made is not subject to judicial review. The provisions imposing the taxes are fairly covered by the title to the acts, and there is nothing to indicate that they were not duly
enacted. The exactions as made do not deny to the com-
38 plainant due process of law. Pullman Company v. Knott,
Comptroller, supra; Peninsular Casualty Co. v. State, supra. The principle announced in Afro-American Industrial & Benefit Ass'n of the United States v. State, supra, is applicable to this case, and the statute imposing the percentage tax upon the gross intrastate receipts of sleeping and parlor car companies in the State does not violate the tax provisions of the State constitution or the constitutional property rights of the complainant. See Peninsular Industrial Ins. Co. v. State, 61 Fla. 376, 55 South. Rep. 398; Peninsular Casualty Co. v. State, supra.

The decree is affirmed.

Taylor, C. J. and Shackleford, Cockrell and Ellis, JJ. concur.

39 Whereupon, to-wit, on the 26th Day of June, A. D. 1915, a Judgment was Duly Made and Entered in said cause by

said Supreme Court of Florida, which Judgment is in the Words and Figures Following, to-wit:

THE PULLMAN COMPANY, a Corporation, Appellant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Appellee.

An Appeal from a Decree of the Circuit Court within and for the County of Leon.

This cause having been submitted to the court at a former term thereof upon the transcript of the record of the decree aforesaid, and argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said decree; it is therefore considered, ordered and adjudged by the court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered that the appellee do have and recover of and from the appellant his costs by him in this behalf expended, which costs are taxed at the sum of $—, all of which is ordered to be certified to the court below.

40 In the Supreme Court of Florida.

THE PULLMAN COMPANY
vs.
W. V. KNOTT, Comptroller.

I, G. T. Whitfield, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from 1 to 39, inclusive, contain true and correct copies of the records filed and the proceedings had in the Supreme Court of the State of Florida in the case of The Pullman Company, a corporation, Appellant, versus W. V. Knott, as Comptroller of the State of Florida, Appellee, and of the opinion and decision of the said Supreme Court of Florida filed in said case on the 26th day of June, A. D. 1915, and of the final judgment of the said Court entered therein on said June 26th, 1915, as the same appear from the originals now on file and of record in my office as Clerk of the Supreme Court of the State of Florida.

Witness my hand and official seal at Tallahassee, the Capital of the State, this 25th day of September, A. D. 1915.

[Seal Supreme Court of the State of Florida.]

G. T. WHITFIELD,
*Clerk of the Supreme Court of the State of Florida.*

41 And Thereupon, to-wit, on the 24th Day of September, 1915, Came the said Appellant and Plaintiff in Error, The Pullman Company, by its Attorney, and Filed in said Supreme Court

of Florida its Assignments of Errors Herein, the Same Being in the Words and Figures Following, to-wit:

The Supreme Court of the State of Florida.

THE PULLMAN COMPANY, Appellant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Appellee.

The Pullman Company, Appellant, in this action in connection with and as a part of its petition for a writ of error, filed herein, makes the following assignments of errors, which it avers were committed in the decision and final judgment of the Supreme Court of the State of Florida against this appellee in the above entitled case, and appearing upon the record herein, that is to say:

First. The Court erred wherein it held and decided that Section 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida which provided that:

"All Sleeping and Parlor Car Companies operating their cars in this State shall, on or before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida, under oath of the Secretary or other officer of such Company, the total amount of their gross receipts derived from business done between points in this State, and at the same time shall pay into the State Treasury the sum of One dollar and fifty cents ($1.50) upon each One Hundred Dollars ($100.00) of such gross receipts," was a legal and valid enactment and not in conflict with Section One, Article Fourteen of the Constitution of the United States, and
42 did not deprive the complainant of its property without due process of law and does not deny to the complainant the equal protection of law.

Second. The Court erred in holding that Section 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida, providing that "All Sleeping and Parlor Car Companies operating their cars in this State (Florida) shall pay into the State Treasury the sum of One Dollar and Fifty cents upon each One Hundred Dollars of the gross receipts derived from business done between points in the State", does not unlawfully discriminate between sleeping and parlor car companies operating their cars and railroads and individuals and other corporations operating or who might operate sleeping and parlor cars and do the business of a sleeping and parlor car company.

Third. The Court erred in holding that the provisions of said Section 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida does not cast special burdens upon sleeping and parlor car companies from which other companies or individuals doing the business of sleeping and parlor car companies are exempt.

Fourth. The Court erred in holding that Section 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida does not grant special privileges to other citizens and other corporations who may do a sleeping and parlor car business and operate sleeping and parlor cars which it denies to the appellant.

Fifth. The Court erred in holding in and by its final judgment that the provisions of said Section 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida was uniform in operation throughout the State upon all citizens, natural or artificial, of the state similarly situated with appellant.

Wherefore your petitioner respectfully prays that a writ of error may be issued out of the Supreme Court of the United States directed to the Supreme Court of the State of Florida, commanding
43 the said court to send to the Supreme Court of the United States a full and complete transcript of the record of all proceedings of said Supreme Court of the State of Florida in said case, wherein The Pullman Company, a corporation, was complainant and W. V. Knott, as Comptroller of the State of Florida was defendant, and that your petitioner may have such other and further relief and remedy in the premises as to the Supreme Court of the United States may seem appropriate, and that said judgment of the Supreme Court of the State of Florida in said case, and every part thereof, be reversed by the Honorable Supreme Court of the United States, and your petitioner will ever pray.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE, *Its Attorney.*

JOHN E. HARTRIDGE,
*Of Counsel and Solicitor for*
*The Pullman Company.*

(Endorsed:) The Supreme Court of the State of Florida—The Pullman Company, vs. W. V. Knott, as Comptroller of the State of Florida.—Assignments of Errors.—John E. Hartridge, Frank B. Kellogg and Gustavus S. Fernald, Attorneys for Appellant.—Filed September 24, 1915, G. T. Whitfield, Clerk Supreme Court.

43½ The Supreme Court of the State of Florida.

THE PULLMAN COMPANY, Appellant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Appellee.

Received, Tallahassee, Florida, October 2, 1915, from John E. Hartridge, Esq., of Counsel and Solicitor for The Pullman Company, Appellant, copy of the Assignments of Error filed by Appellant, in this case as above, in the Supreme Court of the State of Florida, on September 24, 1915.

T. F. WEST,
*Attorney General for the State of Florida, Representing W. V. Knott, as Comptroller of the State of Florida.*

And thereafter, to-wit, on the 24th day of September, 1915, came the Appellant and Plaintiff in Error, The Pullman Company, by

its Attorney, and filed in the said Supreme Court of Florida a Petition for a Writ of Error to the Supreme Court of the United States, which original Petition, with the Allowance thereof by the Chief Justice of said Supreme Court of Florida, are herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, viz:

44 The Supreme Court of the State of Florida.

THE PULLMAN COMPANY, a Corporation, Appellant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Appellee.

To the Honorable R. F. Taylor, Chief Justice of the Supreme Court of the State of Florida:

Now comes The Pullman Company, appellant, by its attorneys, John E. Hartridge, Frank B. Kellogg and Gustavus Fernald, and complains and alleges that it is a citizen of the United States of America; that in the above entitled matter on the 26th day of June, 1915, final judgment was rendered against the appellant by the Supreme Court of the State of Florida, that being the highest court of law or equity in the said state of Florida, wherein and whereby it was adjudged that Section 45 of Chapter 6421 of the laws of 1913 in and for the state of Florida, which provided that "all Sleeping and Parlor Car Companies operating their cars in the state of Florida shall pay into the state Treasury the sum of one dollar and fifty cents upon each one hundred dollars of gross receipts derived from business done between points in the state of Florida" was a valid and lawful enactment and not in conflict with Section One of the Fourteenth Amendment to the Constitution of the United States, in that the said provision did not deprive the appellant of its property without due process of law, and does not deny to the appellant the equal protection of law.

It was also adjudged by the said Supreme Court by its said final judgment in the above entitled matter that Section 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida does not unlawfully discriminate between sleeping and parlor car companies operating their cars, and railroads and individuals and other corporations operating or who might operate, sleeping and
45 parlor cars or do the business of a sleeping and parlor car company.

It was also adjudged by said Supreme Court by its said final judgment in the above entitled matter that said Section 45 of Chapter 641 of the Laws of 1913 in and for the State of Florida placed no special burdens upon parlor and sleeping car companies.

It was also adjudged by said Supreme Court by its said final judgment in the above entitled matter that said Section 45 of Chapter 6421 of the Laws of 1913 in and for the state of Florida does not grant special privileges to other corporations and persons as against the exactions from the appellant.

It was also adjudged by said Supreme Court by its final judgment in the above entitled matter that Section 45 of Chapter 6421 of the Laws of 1913 in and for the state of Florida was uniform and equal in its operation, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore your petitioner presents herewith an exemplified transcript of record of the Supreme Court of the state of Florida in said case and prays that a writ of error to said Supreme Court of the state of Florida be allowed; that a citation be granted and signed; that the bond herewith presented be approved; and that the errors complained of may be reviewed in the Supreme Court of the United States and the judgment aforesaid of the said Supreme Court of the state of Florida be reversed.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE,
*Its Attorney.*

JOHN E. HARTRIDGE,
*Of Counsel and Solicitor for The Pullman Company.*

46 [Endorsed:] The Supreme Court of the State of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Petition for Writ of Error. Filed September 24, 1915. G. T. Whitfield, Clerk Supreme Court. John E. Hartridge, Frank B. Kellogg, Gustavus S. Fernald, Attorneys for Appellant.

47 The Supreme Court of the State of Florida.

THE PULLMAN COMPANY, a Corporation, Appellant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Appellee.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Florida upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and the bond presented by said petitioner for two hundred and fifty dollars for costs be and the same is hereby approved.

R. F. TAYLOR,
*Chief Justice Sup. C't of Fla.*

48 [Endorsed:] In the Supreme Court, State of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Order Allowing Writ of Error. Filed September 24, 1915. G. T. Whitfield, Clerk Supreme Court. John E. Hartridge, Frank B. Kellogg, Gustavus S. Fernald, Attorneys for Appellant.

48½ And thereupon the said The Pullman Company, Appellant and Plaintiff in Error, on the 25th day of September, 1915, filed in the Supreme Court of Florida a Bond herein as required by said Allowance of Writ of Error herein, which Bond, with its approval by the Chief Justice of the Supreme Court of Florida, is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida.

THE PULLMAN COMPANY, Appellant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Appellee.

Know all men by these presents that we, The Pullman Company, a corporation under the laws of the State of Illinois, as principal, and E. M. Rorabeck and H. B. Snell, as sureties, are held and firmly bound unto W. V. Knott, as Comptroller of the State of Florida, in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said obligee, his successors, representatives and assigns; the payment whereof well and truly to be made the Pullman Company binds itself, its successors and assigns, and the said E. M. Rorabeck and H. B. Snell severally bind themselves, their heirs, executors and administrators, jointly and severally by these presents.

Signed, sealed and dated this 24th day of September, 1915.

Whereas, the above named appellant has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Florida.

Now Therefore, the condition of this obligation is such, that if the above named appellant shall prosecute its said writ of error to effect, and answer all costs and damages if it shall fail to
49 make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

[Seal of the Pullman Company.]

THE PULLMAN COMPANY,
By J. S. RUNNELLS, *President.*
E. M. RORABECK. [SEAL.]
H. B. SNELL. [SEAL.]

Attest:
A. L. DENISHEIMER, *Secretary.*
F. B. D.

I hereby approve the foregoing bond and sureties this 25th day of September, A. D. 1915.

R. F. TAYLOR,
*Chief Justice of the Supreme Court of the State of Florida.*

(Endorsed: In the Supreme Court of the State of Florida.—The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida.—Bond.—Filed September 25, 1915, G. T. Whitfield, Clerk Supreme Court.)

And thereupon, to-wit, on the 25th day of September, 1915, there was issued in said cause a Citation to the said Defendant in Error, which original Citation, with the acceptance of service of same by the said Defendant in Error, by his Attorney, is herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, viz:

50 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to W. V. Knott, as Comptroller of the State of Florida, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Florida, wherein The Pullman Company, a corporation, is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Florida this 25th day of September, A. D. 1915.

[Seal Supreme Court of the State of Florida.]

R. F. TAYLOR,
*Chief Justice Supreme Court of Florida.*

Attest:
G. T. WHITFIELD,
*Clerk Supreme Court of Florida.*

I, T. F. West, Attorney General for the State of Florida, and attorney of record for the defendant in error in the case mentioned in the foregoing citation, do hereby acknowledge due service of the said above citation.

This 27th day of September, A. D. 1915.

T. F. WEST,
*Attorney General State of Florida and Attorney for Defendant in Error.*

[Endorsed:] In Supreme Court of the State of Florida. The Pullman Company vs. W. V. Knott, as Comptroller. Citation. Filed September 25, 1915. G. T. Whitfield, Clerk Supreme Court of Florida.

51 And thereupon, to-wit, on the 25th day of September, 1915, there was issued in said cause a Writ of Error from the Supreme Court of the United States, which original Writ of Error, with allowance thereof by the Chief Justice of the Supreme Court of Florida, as hereinbefore recited, is herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, viz:

52 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between The Pullman Company, a Corporation, and W. V. Knott, as Comptroller of the State of Florida, wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of The Pullman Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further
53 to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 25th day of September in the year of Our Lord One Thousand Nine Hundred and Fifteen.

[Seal U. S. Dist. Court, Northern Dist. of Florida.]

F. W. MARSH,
*Clerk District Court of the United States*
*for the Northern District of Florida,*
By C. D. ROBERTSON,
*Deputy Clerk.*

54 [Endorsed:] In the Supreme Court of the United States. The Pullman Company, a Corporation, Appellant and Plaintiff in Error, vs. W. V. Knott, as Comptroller of the State of Florida, Appellee and Defendant in Error. Writ of Error. To the Supreme Court of the State of Florida. Filed September 25, 1915. G. T. Whitfield, Clerk Supreme Court of Florida.

55 UNITED STATES OF AMERICA,
*Supreme Court of Florida:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same. And I further certify that the foregoing pages, numbered from 1 to 54, inclusive, contain true and correct copies of all pleadings and all other papers contained in the record of said cause, and contain the original Petition for Writ of Error and allowance thereof, copy of writ of error bond, original Citation, together with service thereof, copy of Assignment of Errors, and original writ of error.

And I further certify that the original writ of error, bond, original assignments of errors, and copies of the original writ of error and original Citation are now on file in my office as Clerk of the Supreme Court of the State of Florida.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court of Florida, in the City of Tallahassee, the Capital, this the 28th day of September, A. D. 1915.

[Seal Supreme Court of the State of Florida.]

G. T. WHITFIELD,
*Clerk Supreme Court State of Florida.*

Endorsed on cover: File No. 24,942. Florida Supreme Court. Term No. 659. The Pullman Company, plaintiff in error, vs. W. V. Knott, as Comptroller of the State of Florida. Filed October 8th, 1915. File No. 24,942.

# In the Supreme Court of the United States

## October Term A. D. 1916

NO. 262.

THE PULLMAN COMPANY, a Corporation,

Plaintiff in Error,

v.

W. V. KNOTT, as Comptroller of the State of Florida,

Defendant in Error.

**BRIEF OF THOMAS F. WEST, ATTORNEY FOR DEFENDANT IN ERROR, ON MOTION TO DISMISS SAID CAUSE.**

T. J. APPLEYARD, STATE PRINTER, TALLAHASSEE

# In the Supreme Court of the United States

## October Term A. D. 1916

No. 262.

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

v.

W. V. KNOTT, as Comptroller of the State of Florida, Defendant in Error.

BRIEF OF THOMAS F. WEST, ATTORNEY FOR DEFENDANT IN ERROR, ON MOTION TO DISMISS SAID CAUSE.

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This case was brought to this court by writ of error from the Supreme Court of the State of Florida (70 Fla. 9).

The question involved in this litigation is the constitutional validity of Section 45 of Chapter 6421 of the Acts of 1913, Laws of Florida, formerly Section 47 of Chapter 5596, Acts of 1907, Laws of Florida.

imposing a gross receipts tax on sleeping and parlor car companies operating in the State of Florida.

This question has twice before been brought to this court by this plaintiff in error, the only difference in the cases being that each time the tax for a different year or years was involved.

> The Pullman Co. v. Croom, Comptroller of the State of Florida, 231 U. S. 571.
> The Pullman Co. v. Knott, Comptroller of the State of Florida, 235 U. S. 23.

The principle involved, namely, the constitutional validity of the statute mentioned, has been passed upon by this court and by the Supreme Court of the State of Florida, the highest appellate court of said State.

> The Pullman Co. v. Knott, supra.
> The Pullman Co. v. Knott, Comptroller of the State of Florida, 70 Fla. 9, 69 So. 703.

The question involved in the motion to dismiss has also been passed upon by this court, the precise question having been considered and determined in the case of The Pullman Company v. Croom, supra.

In that case it appeared from the record that Croom, against whom the suit was instituted, had been succeeded in the office of Comptroller of the State of Florida by Knott, and this court held that upon the retirement from office of the officer against whom the suit was brought, the suit abated, and it was, therefore, ordered by the court that the appeal taken therein should be dismissed for want of a

proper appellee to stand in judgment upon the only question presented to the court in the case.

In this case the same question is presented, it having been made known to this court in the motion to dismiss that the term of office of the defendant in error has expired and that he is no longer Comptroller of the State of Florida.

We submit that the same result should follow and that the motion to dismiss should be granted.

Respectfully submitted,

THOMAS F. WEST,
Attorney General of the State of Florida, Attorney and Solicitor for Defendant in Error.

State of Florida,
County of Leon.

Before the subscriber personally appeared Julia McKinnon, stenographer for T. F. West, Attorney General of the State of Florida, who, being duly sworn, upon oath, says that she placed true and correct copies of the foregoing brief in envepoles addressed as follows: one to Honorable Frank B. Kellogg, Merchants National Bank Building, St. Paul Minnesota; one to Honorable Cordenio A. Severance, Merchants' National Bank, St. Paul, Minnesota; one Honorable Robert E. Olds, St. Paul, Minnesota; one to Honorable Gustavus S. Fernald, Care The Pullman Company, Chicago, Illinois; and one to Honorable John E. Hartridge, Jacksonville, Florida; that upon each of said envelopes was placed sufficient post-

age to carry same to its destination; and that she deposited said envelopes, duly sealed, in the post office at Tallahassse, Florida, on the 23 day of February, 1917.

Sworn to and subscribed
before me this 26th
day of February, 1917. JULIA McKINNON.

B. F. WILLIS, (Seal).
Notary Public, State of Florida.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

## No. 262.

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA.

## MOTION TO DISMISS.

THOMAS F. WEST,
*Attorney General of the State of Florida.*

(25,942)

IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1916.**

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## No. 262.

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THE PULLMAN COMPANY, A CORPORATION, PLAINTIFF IN ERROR,

*vs.*

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA, DEFENDANT IN ERROR.

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You will take notice that on Monday, the 19 day of March, A. D. 1917, at twelve o'clock noon, or as soon thereafter as the same may be heard, I shall present to the honorable the Supreme Court of the United States, at Washington, D. C., a motion, copy of which is hereto attached, to dismiss this said cause upon the grounds stated in said motion.

Tallahassee, Florida, February 22, 1917.

THOMAS F. WEST,
*Attorney General of the State of Florida,*
*Attorney for Defendant in Error.*

To Honorable Frank B. Kellogg, St. Paul, Minnesota; Honorable Cordenio A. Severance, St. Paul, Minnesota; Honorable Robert E. Olds, St. Paul, Minnesota; Honorable Gustavus S. Fernald, Chicago, Illinois; Honorable John E. Hartridge, Jacksonville, Florida, attorneys and solicitors for plaintiff in error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

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**No. 262.**

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THE PULLMAN COMPANY, *a Corporation, Plaintiff in Error,*

*vs.*

W. V. KNOTT, *as Comptroller of the State of Florida, Defendant in Error.*

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Comes now the defendant in error in the above entitled cause, by his attorney, the attorney general of the State of Florida, and makes known to this court that the said defendant in error is no longer the comptroller of the State of Florida, his term of office having expired on January 2, A. D. 1917, and he thereupon retired from said office and was succeeded in said office by Honorable Ernest Amos, who is now the duly commissioned and acting comptroller of the State of Florida; and said defendant in error, by his attorney, moves the court to dismiss said cause because:

1. The said suit abated upon the retirement from office of the said W. V. Knott, comptroller of the State of Florida, defendant in error, and this court can, therefore, take no further or other action therein except to enter an order dismissing it.

2. The said defendant in error, W. V. Knott, having retired from the office of comptroller of the State of Florida

and no longer occupying the said office, there is no proper defendant in said cause and no one to stand in judgment therein upon the only question presented by the record in said cause to this court.

THOMAS F. WEST,
*Attorney General of the State of Florida,*
*Attorney for Defendant in Error.*

STATE OF FLORIDA,
*County of Leon:*

Before the subscriber personally appeared Julia McKinnon, stenographer for T. F. West, attorney general of the State of Florida, who, being duly sworn, upon oath says that she placed true and correct copies of the foregoing notice and motion in envelopes addressed as follows: one to Honorable Frank B. Kellogg, Merchants National Bank Building, St. Paul, Minnesota; one to Honorable Cordenio A. Severance, Merchants National Bank Building, St. Paul, Minnesota; one to Honorable Gustavus S. Fernald, care The Pullman Company, Chicago, Illinois, and one to Honorable John E. Hartridge, Jacksonville, Florida; that upon each of said envelopes was placed sufficient postage to carry same to its destination; and that she deposited said envelopes, duly sealed, in the post office at Tallahassee, Florida, on February 23, 1917.

JULIA McKINNON.

Sworn to and subscribed before me this 26th day of February, 1917.

[SEAL.]

B. F. WILLIS,
*Notary Public, State of Florida.*

My commission expires April 12, 1919.

IN THE

# Supreme Court of the United States,

OCTOBER TERM, A. D. 1916.

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THE PULLMAN COMPANY, a Corporation,
*Plaintiff in Error,*

*vs.*

W. V. KNOTT, as Comptroller of the State of Florida,
*Defendant in Error.*

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## BRIEF IN OPPOSITION TO MOTION OF DEFENDANT IN ERROR FOR DISMISSAL OF WRIT.

The defendant in error has made a motion to dismiss the writ in this case on the ground that the term of office of the defendant Knott has expired and that therefore the suit against him has abated.

The plaintiff in error objects to the dismissal, on the ground that Knott now has a judgment of the Supreme Court of Florida adjudging that his acts were legal and for his costs. (Rec., 26.)

A brief statement of the issues will illustrate our position. This suit was brought in the State Court by The Pullman Company against Knott, comptroller of Florida, to enjoin him and his successor or successors in office from estimating, levying and as-

sessing a tax on the gross receipts of The Pullman Company, on the ground that the law levying said tax was void under the Constitution of the United States, and to enjoin him and his successor or successors from issuing a warrant directed to the sheriff, requiring said sheriff to levy upon and sell the property of the company in payment of the tax. Defendant Knott claimed the law was constitutional and claimed his authority thereunder. The Circuit Court of Florida held that the law was constitutional and was sufficient justification for the authority of Knott; and the case was affirmed by the Supreme Court of that state. 70 Fla. 9. The writ of error was prosecuted to review that judgment in favor of Knott.

It is not correct to say that this court has sustained the tax in question and that the only difference in the cases is that each time the tax was for a different year. Briefly the question is as follows:

It is claimed by The Pullman Company that the law imposing the gross earnings tax is an unlawful discrimination, in that it imposes no such taxes on railroads running their cars into and through the state. In other words, that in taxing identically the same kind of property, engaged in the same kind of business, the state levies under the law three kinds of taxes against the Pullman Company and only two kinds of taxes against the railroad companies. The constitution of Florida authorizes only two kinds of taxes,—an *ad valorem* tax on the cash valuation and a license tax. This is not denied. The following are the taxes levied against The Pullman Company: (1) A license tax of certain amount per car aggregating around $5,000 per year from 1907 until 1913 and, be-

ginning in 1913, a flat license tax of $5,500 upon the payment of which tax a license is issued authorizing the company to do business; (2) an *ad valorem* tax on all property of the company used in the state, both in interstate and intrastate business, the same as all other companies engaged in that business; and (3) a tax upon gross receipts, which is not in terms, and never has been, levied as a license tax. The railroads, on the other hand, pay only two kinds of taxes: (1) a license tax; and (2) an *ad valorem* tax on its property, the same as The Pullman Company pays, but no tax is imposed on the railroad earnings from the same kind of business and made with the same kind of property. (Record pages 10, 11)

The first case brought to this court was dismissed on the ground that Croom, comptroller, the defendant, had died. (231 U. S. 571.) That case was in this court on direct appeal from an order denying an injunction. In the next case (235 U. S. 23) this court declined to pass upon the question of whether the law was valid under the constitution of the state as a license tax. As to the federal question, the court held that it did not appear in the case that any railroad in the State of Florida operated its own sleeping cars, parlor cars and diners. A suit was therefore brought in the State Court and the State Supreme Court held that the imposition of the gross earnings tax was in effect a license tax,—though not in form a license tax, though levied on gross earnings, though no license was issued for it, though it did not authorize the company to continue doing business upon payment of the tax, and though a license tax was already paid, and we suppose that holding is binding upon this court.

It is now claimed here, as will appear from our brief, already filed in the case, that the levy of this tax upon The Pullman Company when no such tax is levied on the earnings of railroad companies, is an unlawful discrimination. In other words, that there is no ground for a different classification of the same kind of business and that under the authorities the imposition of such a tax is a denial of equal protection of the laws and the taking of property without due process of law.

In *Pullman Company* v. *Croom*, 231 U. S. 571, where there was a dismissal by this court on the suggestion of the death of Croom, who was comptroller of the State of Florida; the case was before this court as above stated on direct appeal from an order denying an injunction to the plaintiff in error which sought to restrain Croom from assessing a tax upon its property (that is, its earnings) and collecting the same, but his successor, who was substituted by stipulation, had *not* threatened to do the things sought to be restrained. The situation in the case now before the court is altogether different.

We concede, of course, the general rule that a suit will not lie against a state and that the suit in this case is against Knott as an individual, to enjoin him from enforcing an illegal tax and from levying upon and selling the property of the plaintiff in error. The court below held that Knott was justified under the law, and rendered such judgment, and also a judgment for costs. The question now before this court between plaintiff in error and defendant in error is whether that judgment is a personal protection to Knott.

In the case of judgments no different rule obtains because one of the parties to the judgment happens to hold a state office, and his ceasing to hold that office has no effect upon the judgment, if in his favor as a justification of his action and hence a personal protection to him. It has been held by this court that a change in the person holding an office does not destroy the effect of a judgment against him or even as *res judicata.*

> *New Orleans* v. *Citizens Bank,* 167 U. S. 371, 388-9-399.

The opinion in that case by the present Mr. Chief Justice goes very fully into the effect of a judgment against a public officer in a case involving taxes. With respect to a change in the person holding the office the court said (page 389):

> "The mere fact that there has been a change in the person holding the office does not destroy the effect of the thing adjudged. *Scotland County* v. *Hill,* 112 U. S. 183; *Harshman* v. *Knox County,* 122 U. S. 306; *State* v. *Rainey,* 74 Mo. 229; *Harmon* v. *Auditor,* 123 Ill. 122."

In that case the judgment was against a public official, holding the tax invalid. It was argued in favor of the tax that the judgment should not be held an estoppel of the thing adjudged, the judgment having been against the right to enforce the tax. It is apparent from what the court said, in refuting this argument (167 U. S. on page 399), that the rule of law stated in the above quotation from the opinion of the court is the same whether the judgment is in favor of or against the official. The court there said:

> "* * * Manifestly, if the estoppel of the

thing adjudged does not arise from a judgment preventing taxation, such an estoppel cannot also result from a judgment enforcing taxation."

The judgment of the Supreme Court of Florida in the present case stands in full force and effect and unless reversed by this court constitutes the protection of the defendant in error; that was the thing adjudged; and also he may enforce it by collection of his costs at any time during its life. It is a binding judgment which should not have been rendered if our contention on the federal question be sustained.

An adjudication, whether it was right or wrong, concludes the parties to it until it has been reversed or otherwise set aside in some direct proceeding for that purpose.

*Scotland County* v. *Hill*, 112 U. S. 183, 187.

It was charged in our bill that the defendant in error was about to do an act of wrong and injury to the rights of the plaintiff in error under the color of an unconstitutional statute; the defendant in error was capable of being sued, was not exempt from such a suit and the cause of action was cognizable in the court where it was brought, from which it has proceeded in regular order to this court for the purpose of reviewing the final judgment of the Supreme Court of Florida. (*Tindall* v. *Wesley*, 167 U. S. at p. 216.) The defendant in error here was sued as an individual because he asserted the authority of an officer of the state to do the threatened acts; his defense was that his authority was sufficient in law to protect him. (*Id.* at p. 219.) He now has a judgment to that effect and it is that judgment the

plaintiff in error seeks to have reviewed here and the fact that the defendant in error is no longer a state officer does not destroy the effect of the judgment *nor of the thing adjudged.* The judgment in his favor and to protect him in his acts, stands unless and until this court decides that it is erroneous. It needs no substitution of his successor to decide that question, and it is the only way the question can ever be decided in this court.

If the motion to dismiss should be granted the situation of the plaintiff in error with respect to getting its action heard in this court would be such as the Supreme Court of Colorado in a similar case sought to guard against in an action against the treasurer of the state pending on appeal, and whose term had expired during the pendency of the appeal. The Supreme Court of Colorado heard and determined the appeal, and said that to hold otherwise would:

> "result in a denial of justice and might prevent actions of this character being disposed of upon their merits, because in many instances, before the case was finally decided, the incumbents of the office would change and with each change the relator would be compelled to commence his action *de novo.*"
>
> *Nance, State Treasurer,* v. *People, ex rel. Sheedy,* 54 Pac. Reporter 631, 632.

The Supreme Court of Florida held similarly, and for the same reason stated, in *Commissioners* v. *Bryson,* 13 Fla. 281, 287, although that case is not apposite, a continuing board being there involved.

With a short term of office, it is a question of much doubt whether a case could be taken through

the courts of Florida and to this court and prosecuted to a final judgment during one term of office, and thus, as said by the Supreme Court of Florida in the Bryson case (13 Fla., on page 287), this plaintiff in error "would be forever denied their (its) right(s)," to have the federal question finally determined in this court. There is no other remedy in Florida. The Pullman Company cannot pay the tax and sue to recover back the amount. That is conceded. There is no statute in Florida authorizing any other form of contest.

Respectfully submitted,

FRANK B. KELLOGG,
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No. 262

IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1916

**THE PULLMAN COMPANY, A CORPORATION,**
*Plaintiff in Error,*

*vs.*

**W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA,**
*Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA

## BRIEF OF PLAINTIFF IN ERROR

FRANK B. KELLOGG,
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THE PIONEER COMPANY, ST. PAUL

# INDEX.

## LIST OF CASES CITED.

IN THE

# Supreme Court of the United States,

OCTOBER TERM, A. D. 1916

No. 202

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THE PULLMAN COMPANY, A CORPORATION,
*Plaintiff in Error,*

*vs.*

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA
*Defendant in Error.*

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IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA

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## BRIEF OF PLAINTIFF IN ERROR.

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This case comes to this court by writ of error to review the judgment of the Supreme Court of Florida, (69 So. 703), holding constitutional § 45 of Chapter 6421, Laws of Florida, 1913, imposing a gross earnings tax upon the income of the plaintiff in error.

## I.
## HISTORY OF LITIGATION.

The grounds of objection to the tax will be stated fully hereafter. It is here sufficient to say that the plaintiff in error claims that the statute imposing this tax is void because it provides for the taking of property without due process of law, and deprives the plaintiff in error of the equal protection of the laws in violation of the constitution of the United States.

The first suit in this course of litigation over the same question was brought by the plaintiff in error to enjoin A. C. Croom, then comptroller of the State of Florida, from collecting the said gross earnings tax by summary process against the cars of plaintiff in error for the years ending October 31, 1909, and October 31, 1910, amounting to $6971.38. The United States Circuit Court refused an injunction upon the ground that the tax was a license tax, and on the further ground that the plaintiff in error had no standing in court to test the validity of the tax until it should have made a return and paid the tax. The comptroller thereupon levied upon the cars of the plaintiff in error which were engaged in transporting passengers in Florida, and in order to obtain the release of the cars, plaintiff in error was compelled to pay the taxes; but as there was no statute of Florida authorizing the payment of this tax and the recovery of the money, it was,

of course, a voluntary payment, and the plaintiff in error was without any remedy whatever.

Subsequently, plaintiff in error filed a bill in the same court to enjoin the collection of taxes for the year ending October 31, 1911. The injunction was denied on the grounds that the tax was a graded license tax, and was within the legislative power of the state.

Appeals from the orders denying the injunctions in both of the cases were taken to this court. Before those appeals were reached for hearing in this court, the plaintiff in error filed its bill in the United States District Court against the defendant in error Knott as comptroller, to enjoin the collection of the gross earnings taxes for the year ending October 31, 1912, and upon the hearing the District Court upon payment of the taxes into court to await the determination of the question pending on appeal in the other cases above mentioned, enjoined the defendant from enforcing the taxes until this court should decide the cases therein pending between the parties, involving the questions involved in that case.

When the two appeals in the previous cases (for taxes claimed for the years ending October 31, 1909, October 31, 1910, and October 31, 1911, which we have mentioned), came on for hearing in this court, they were dismissed on the ground that pending the appeals, A. C. Croom had died,

and that the court was without jurisdiction. (231 U. S. 571). When the mandate was filed in the court below in the case brought to enjoin the collection of the taxes for the year ending October 31, 1911, the plaintiff in error filed its supplemental bill in the United States District Court against W. V. Knott, who succeeded Croom as comptroller, to enjoin the tax for the year ending October 31, 1911, and at the same time filed a new bill against Knott as comptroller, to enjoin the enforcement of the taxes for the year ending October 31, 1913.

These came on to be heard, and an order was made denying the injunction but without stating any grounds therefor. Thereupon the plaintiff in error prayed an appeal to this court, and the court granted the appeal and made the following order in each case:

> "Now Therefore, it is Ordered upon payment by the complainant into this court as tendered in the twelfth paragraph of bill, within the next twenty days, and in the meantime that this appeal do operate as a *supersedeas,* and the defendants are hereby enjoined as prayed for in the supplementary bill pending the hearing and determination of the appeal prayed for and taken in this case to the Supreme Court of the United States, and when such determination of said case is had in said court, a further order will be made by this court in this case."

The two appeals last named came on to be heard together in this court, and were decided November 2, 1914, and in its opinion this court held that the contention of the plaintiff in error being that the statute under which the tax was imposed was a violation of the state constitution, must be decided by the state court, and this court declined to pass upon the validity of the law. (235 U. S. 23).

Subsequently, plaintiff in error filed its bill in chancery in the Circuit Court of Leon County, Second Judicial Circuit of Florida, to restrain the defendant in error Knott, as comptroller of the state, from enforcing by summary process against plaintiff in error the collection of the gross earnings tax for the year ending October 31, 1914. The court denied a motion for an injunction *pendente lite,* and decreed a dismissal of the bill. An appeal from the order and decree was taken to the Supreme Court of Florida. That court affirmed the decree of the lower court; and to review the judgment the case is brought to this court on writ of error.

## II.
## STATEMENT OF THE CASE.

The Pullman Company is an Illinois corporation engaging in the business of furnishing sleeping cars, parlor cars and dining cars to railroad companies in the State of Florida and in various other states, some of the cars being run between points wholly within the State of Florida, and others from points within to points without or *vice versa*. The defendant in error is the comptroller of the State of Florida.

### GROSS EARNINGS TAX.

By § 48 of Chapter 4115 of the laws of Florida for 1893, it was provided that sleeping and parlor car companies should report to the state comptroller the total amount of their gross receipts derived from business done between points in the state, and should pay a tax of $1.50 upon each $100 of such receipts. In case no report should be made, the comptroller was to estimate the amount plus ten per cent as a penalty, and proceed to collect the same as in the case of other delinquent taxes, to-wit, by issuing a warrant and levying upon the property of the delinquent. In 1895 these provisions were reenacted, and in 1907 in § 47 of Chapter 5596, the same provisions were again reenacted in all the material particulars and practically word for word. They were reenacted still again in 1913 with some slight

change with respect to notice, but in all essentials the same as before, and they now constitute § 45 of Chapter 6421 of the Laws of 1913.

This gross earnings tax was always imposed under these laws as a direct property tax, and as such paid by the plaintiff, and never as a license tax either in form or in fact. Prior to 1907 this was the only tax levied upon the property of sleeping car companies in Florida.

AD VALOREM TAX.

In 1907 by § 46 of Chapter 5596, it was provided that sleeping and parlor car companies, including the cars of the same, should be subject to an *ad valorem* tax the same as railroads, and it was made the duty of the comptroller and other officers to assess all the property of the companies within the state; and the value of the locomotives, engines, passenger, sleeping, parlor, freight, and other cars, was to be apportioned by the comptroller pro rata per mile of track, and the proportionate value thereof assessed by the counties, cities and towns through which the railroad ran, the same as the property of individuals. Under these provisions of the statute, the plaintiff in error has had all its property engaged in both interstate and intrastate commerce in Florida, taxed at the same rate as railroad property and all other property is taxed in that state. These taxes the plaintiff in error has paid each year.

LICENSE TAX.

In Chapter 5597 of the Laws of 1907, the legislature imposed a so-called license tax upon companies engaging in the sleeping or parlor car business, and prohibited any corporation engaging in such business unless a state license should have been procured, and also provided for the imposition of further license taxes by the counties, cities and towns. The license was $25 for sleeping and parlor cars, $40 for buffet cars, and $20 for dining cars. These provisions remained in force until 1913, when they were amended, and now constitute § 44 of Chapter 6421 of the Laws of 1913. The amendment provided that each company should pay to the comptroller of the state a license tax of $5500, and no county or municipal license taxes were to be required. The plaintiff in error has each year paid its license amounting to from $4759 to $5500 per year, received its license to do business, and in all respects has complied with the license tax law.

From the above statement it will be seen that the State of Florida is attempting to tax sleeping and parlor car companies in three ways:

(1) By a tax upon the gross receipts which has always been imposed as a property tax:

(2) By an *ad valorem* property tax; and

(3) By a license tax.

The provision authorizing the collection of the gross earnings tax, the conditions attached to its

collection, the absence of a grant of any privilege or permission in return therefor, the fact that the right to do business was not made dependent upon its payment, that the provision was not made a part of the license tax laws but was inserted as a provision for the taxation of the property for obtaining revenue, would all seem to show that this gross earnings tax was considered as a property tax and not as a license tax. The lower court, however, has decided that it is, in fact, the latter. But in any event the railroad companies in the state which in fact do business to all intents and purposes of the same nature and jointly with the plaintiff in error, although they pay a license tax and an *ad valorem* tax, do *not* pay any gross earnings tax. Therefore sleeping and parlor car companies are artificially classed by themselves and taxed together on the same basis. There is no ground for such a classification. It is unjust and unreasonable and substantial discrimination is made thereby against the plaintiff in error. The plaintiff in error is, as a result, deprived of its property without due process of law, and is deprived of the equal protection of the laws.

Under the Florida law there is no method by which the taxes may be paid under protest and an action to recover the same instituted at a later period of time. Therefore the plaintiff in error has no remedy at law.

## III.

## ASSIGNMENTS OF ERROR.

The assignments of error relied upon to reverse the decree of the Court below are as follows:

1. The Court erred in holding that § 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida which provided that

> "All sleeping and parlor car companies operating their cars in this state shall on or before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida under oath of the Secretary or other officer of such company, the total amount of their gross receipts derived from business done between points in this state, and at the same time shall pay into the state treasury the sum of one dollar and fifty cents ($1.50) upon each one hundred dollars ($100) of such gross receipts."

is a legal and valid enactment and not in conflict with § 1, Article 14 of the Constitution of the United States and does not deprive the complainant of its property without due process of law, and does not deny to the complainant the equal protection of law.

2. The Court erred in holding that § 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida providing that

> "All sleeping and parlor car companies operating their cars in this state shall on or

> before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida under oath of the Secretary or other officer of such company, the total amount of their gross receipts derived from business done between points in this state, and at the same time shall pay into the state treasury the sum of one dollar and fifty cents ($1.50) upon each one hundred dollars ($100) of such gross receipts."

does not unlawfully discriminate between sleeping and parlor car companies operating their cars and railroads, and individuals and other corporations operating or who might operate sleeping and parlor cars and do the business of a sleeping and parlor car company.

3. The Court erred in holding that § 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida providing that

> "All sleeping and parlor car companies operating their cars in this state shall on or before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida under oath of the Secretary or other officer of such company, the total amount of their gross receipts derived from business done between points in this state, and at the same time shall pay into the state treasury the sum of one dollar and fifty cents ($1.50) upon each one hundred dollars ($100) of such gross receipts."

does not cast special burdens upon sleeping and parlor car companies from which other companies or individuals doing the business of sleeping and parlor car companies are exempt.

4. The Court erred in holding that § 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida providing that

> "All sleeping and parlor car companies operating their cars in this state shall on or before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida under oath of the Secretary or other officer of such company, the total amount of their gross receipts derived from business done between points in this state, and at the same time shall pay into the state treasury the sum of one dollar and fifty cents ($1.50) upon each one hundred dollars ($100) of such gross receipts."

does not grant special privileges to other citizens and other corporations who may do a sleeping and parlor car business and operate sleeping and parlor cars, which it denies to the complainant.

5. The Court erred in holding that § 45 of Chapter 6421 of the Laws of 1913 in and for the State of Florida providing that

> "All sleeping and parlor car companies operating their cars in this state shall on or before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida under oath of the Secretary or other officer of such company,

> the total amount of their gross receipts derived from business done between points in this state, and at the same time shall pay into the state treasury the sum of one dollar and fifty cents ($1.50) upon each one hundred dollars ($100) of such gross receipts."

is uniform in operation throughout the state upon all citizens, natural or artificial, of the state similarly situated with complainant.

## IV.
## ARGUMENT.

Under the laws of Florida sleeping and parlor car companies are subjected to three forms of taxation, and no other companies or corporations doing business in the state are likewise assessed. First, they pay an *ad valorem* tax, based upon the assessed value of their property. Second, they pay a license tax for engaging in the sleeping and parlor car business. Third, in addition to this, they are required to file a statement of their gross earnings within the state, and the comptroller is required to assess 1½ per cent of these gross earnings and collect it by summary process.

It is to restrain the comptroller from enforcing the collection of this last enumerated tax that this suit was brought.

The plaintiff in error claims that the statute and the imposition of the tax thereunder deprives the plaintiff in error of its property without due process of law, and denies to the plaintiff in error the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States. Under the Constitution of Florida but three forms of taxes can be levied in the State: an ad valorem tax, a capitation tax and a tax on licenses. The state court held that this gross earnings tax constituted a license tax. Whether considered as a license tax

or as a property tax, we believe it to be unconstitutional.

Section 47 of Chapter 5596 is an attempt on the part of the Legislature of Florida to impose upon sleeping and parlor car companies and their property a tax and a burden not imposed on others or on other property, either through oversight in continuing that provision in the statutes after adopting the ad valorem tax for sleeping car property or with the intent to produce discrimination and inequality of taxation.

Whether oversight or intention, such an exaction is a taking of property without due process of law and deprives the person taxed of the equal protection of the law.

*Santa Clara County* v. *Southern Pacific Ry.*, 18 Fed. 385, 399.

We recognize that unequal taxes alone growing out of overvaluation or by classification do not ordinarily amount to a deprivation of property without due process of law, or at any rate that the question in such a case is not open in this court, where the state court has sustained the tax. But where the statute itself proceeds upon a wrong principle making an arbitrary exaction, which being unauthorized is virtually no more than a forced contribution, then within the rule of this court, as we understand it, the court will form its own judgment as to the scope and purpose of the statute, and will for itself examine

and determine whether there is a deprivation of property without due process of law, as well as whether there is a denial of the equal protection of the law.

Morgan v. Louisiana, 118 U. S. 455, 462.

Collins v. New Hampshire, 171 U. S. 30, 34.

Atchison, etc., Ry. Co. v. Matthews, 174 U. S. 96, 100, 101.

Western Turf Assn. v. Greenberg, 204 U. S. 359, 362.

Galveston, etc., Ry. v. Texas, 210 U. S. 217.

It was the wrong principle involved that condemned the tax imposed in Fargo v. Hart, 193 U. S. 490. This court there said it was not a question of overvaluation, but a difference in principle. In Raymond v. Chicago Traction Co., 207 U. S. 20, 38, a difference in the method of assessing property of the same kind, was successfully attacked on that ground.

On principle, it cannot be different in the resulting burden on the taxpayer whether his property is *once* assessed and taxed by a wrong method which discriminates against him by increasing his taxes over those of other taxpayers, or whether his property is several times taxed, *once* by valuation, *once* by imposing a license tax and *once more* upon the earnings it produces, and his tax thereby increased over other taxpayers whose property is taxed a less number of times.

He is equally discriminated against and denied the equal protection of the laws in either case.

This is not a question of overvaluation, but the imposition of a tax by legislative act which provides for its arbitrary assessment and for summary proceedings for its collection. The statute imposing the tax is an arbitrary exercise of power, and virtually provides for a forced contribution. Such arbitrary exactions not only deny the equal protection of the laws, but amount to a taking of property without due process of law.

> See Duluth & Iron Range Ry. Co. v. St. Louis County, 179 U. S. 302, 305.
>
> Also concurring opinion of Mr. Justice White, with whom concurred Mr. Justice Harlan, Mr. Justice Gray and Mr. Justice McKenna, in Stearns v. Minn., 179 U. S. 223, 262, Bradley v. City of Richmond, 227 U. S. 477.

Equal protection is denied because the laws of Florida impose an ad valorem tax upon the property of plaintiff in error, a license tax, and an additional tax computed on its earnings from the property taxed, imposed on no other property in the state.

Section 46, Chapter 5596, provides for the taxation of the property of railroad companies and of sleeping and parlor car companies. Both classes of companies are required to return their sleeping and parlor cars for taxation, and both

are required to pay ad valorem taxes thereon. Both are also required to pay specific license taxes under the separate license laws of the state. But the statutes of Florida do not provide for taxing the gross receipts from sleeping or parlor car business done by the railroad company, and *only* the sleeping car companies are required, *in addition* to the ad valorem and specific license tax, to return their gross receipts from their business for taxation and submit to a tax on them. Such a discrimination cannot be sustained under the power of classification. It has repeatedly been so held.

Southern Ry. v. Greene, 216 U. S. 400.

Pullman Palace Car Co. v. State, 64 Tex. 274.

Ala. Consolidated Coal & Iron Co. v. Herzberg, 59 So. 305.

State ex rel. Wyatt v. Ashbrook, 154 Mo. 375.

These cases are reviewed later in this brief.

See also, Gulf C. & S. F. Ry. v. Ellis, 165 U. S. 150, 155, 165, where it is said (page 165):

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper re-

lation to the attempted classification—and not a mere arbitrary selection."

There is no real and substantial distinction, in fact no distinction whatever (except the ownership of the cars), between sleeping car business done in the cars of a railroad company and that done in the cars of a sleeping car company and the tax provided on sleeping or parlor car companies is mere arbitrary selection.

The attention of the court should be directed to the fact that the bill of complaint in the present case differs from those before the court in the case of Pullman Co. v. Knott, 235 U. S. 23. In the opinion in that case the court says that it did not appear that any railroad in the state of Florida did operate its own sleeping or parlor cars, and that it could not upset a tax upon hypothetical and unreal possibilities if it would be good upon the facts as they were. In this case it appears that there are railroads or a railroad in Florida actually operating their or its own cars in the same manner as the plaintiff in error operates its own.

The force of what this court said in the case last cited and in Southern Ry. v. Greene, 216 U. S. 400, is in no way weakened by Aluminum Co. v. Arkansas, 222 U. S. 251, or Bradley v. Richmond, 227 U. S. 477.

In fact, in the latter case all that this court had previously said regarding the reasonableness of a classification was upheld.

The court said on page 481:

> "An ordinance which commits to a board, committee or single official the power to make an *arbitrary* classification for the purposes of taxation would meet neither the requirement of due process nor that of equal protection of the law."
>
> (Italics the court's).
>
> "But this ordinance does not authorize any arbitrary classification, *nor could the state* or the council legally confer or exercise arbitrary power in classifying for the purpose of either regulating, or licensing, or taxing. The guarantee of the Fourteenth Amendment would forbid."
>
> (Italics ours).
>
> "But whether the power of classifying be exercised by the state directly or by a city council authorized to require the payment of such a tax as a condition to the issuance of the license, it is at last the exercise of legislative discretion and is subject, in either case, to the guarantee referred to."

The same doctrine has been fully recognized by the Supreme Court of Florida with respect to classification.

> Seaboard Air Line Ry. v. Simon, 56 Fla. 545.
>
> Harper v. Galloway, 58 Fla. 255.

In the Seaboard Air Line case the court said the only question presented for determination was whether a statute authorizing an allowance of 25 per cent. per annum on the principal sum

of a claim for goods lost while being transported by a railroad company, but not in the case of any other common carrier, was valid.

> "The guaranty of due process of law afforded by the constitution forbids the arbitrary exercise of governmental power by the legislature. An unreasonable classification of persons or corporations for the purposes of a legislative regulation that will be burdensome to those included in the class regulated, leaving others who are similarly conditioned with reference to the *subject regulated* free from the regulation and burden, may be an arbitrary exercise of governmental power. * * * The subject regulated is not peculiar to railroads, but is equally and similarly applicable to all common carriers of goods, whether the service is rendered by the use of railroads, boats or other means. If this statute is enforced and two entirely similar shipments are made at the same time between the same points, one by means of a railroad and the other by means of a steamboat, and both shipments are lost in transit, the shipper may, under the circumstances stated in the Act, recover from the operators of the railroads 25 per cent. per annum in addition to the value of the goods lost by it; while, under exactly similar circumstances only the value of the goods may be recovered from the operators of the steamboat. This is clearly an unjust discrimination against those operating the railroad, since there is

apparently no real difference between the two common carriers with reference to the subject regulated, which is the payment of goods lost in transportation by a common carrier."

The court further on said:

"The subject of regulation in this case is not the operation of railroads, but it is the payment of goods lost in transportation by a particular kind of common carrier."

The court held that the special classification in the statute violated the guaranties of due process of law and the due protection of the law. Let us paraphrase slightly the simile of the Florida court above quoted, and say in case at bar:

"If this statute is enforced and two persons occupy accommodations in sleeping or parlor cars between the same two points in Florida, traveling, however. by different lines, each on his journey is furnished food and refreshment, one in a sleeping car owned by the railroad on which it runs and the other in the car of a sleeping or parlor car company running on another railroad, each company making a separate charge for the sleeping or parlor car accommodations, and the food and refreshment, in addition to the transportation fare; the sleeping or parlor car company must pay to the state one and one half per cent. of what it received from its patron for its service, but the railroad company is not subjected to that burden

upon its earnings from precisely the same business; each company pays *ad valorem* taxes on the car which is used and each company pays the specified license tax provided by another statute for conducting its business. This is clearly an unjust discrimination against the owner of the sleeping or parlor car which does not own a railroad, since there is no real difference between the two common carriers with reference to the *subject* on which the tax is imposed, viz., the earnings from sleeping and parlor car accommodations."

Almost the exact case arose in Texas, where a statute imposing a tax on owners of sleeping cars for running them over the railway of another, but exempting the act of running the same kind of cars over the road of the owners of the cars, was held unconstitutional.

Pullman Palace Car Co. v. State, 64 Texas 274.

In the Texas case just cited the exemption was provided in the act. In the case at bar *the same exemption* was accomplished by expressly providing the tax for the sleeping car companies and failing to provide for the railway companies.

Both the 1907 and 1913 statutes are silent with respect to taxation of gross receipts of railway companies from the same kind of business on which the gross receipts are taxed to sleeping car companies. The tax provided on the receipts of sleeping car companies is $1.50 upon each

$100. Suppose a tax of one-half of that rate on each $100 had been provided on the gross receipts from the same kind of business done by the railroad companies. Both on principle and on the authorities, it would be held that sleeping car companies were discriminated against and that the equal protection of the laws was thereby denied them. Had that been the statutory provision, it would never have been questioned that it was a discrimination and such a denial. How can the discrimination be less and the denial of equal protection of the laws be less when *no* tax is imposed upon gross receipts of the railroad companies derived from the same kind of business as these gross receipts on which the sleeping car companies are taxed? Even though we must adopt the view of the state court and consider that the tax was in fact a license tax, yet the imposition of it in the instant case is not valid, for, if sustained, the plaintiff in error is nevertheless denied the equal protection of the laws.

It is true that license taxes, when imposed, are imposed by the State rather in the exercise of its police power than in the exercise of a taxing power itself. It is also true that the constitutional requirement as to the uniformity of taxation does not apply with the same strictness to license taxes as to other taxes.

Ex parte City Council of Montgomery, 64 Ala. 463.

Ex parte Mirande, 73 Cal. 365.

Baker v. City of Cincinnati, 11 Ohio State 534.

But, nevertheless, license taxes may not be arbitrarily imposed with entire disregard of the rights of citizens affected thereby to the equal protection of the laws. License taxes must be based upon some valid classification, not arbitrary legislative caprice alone. It is true that legislatures may carry the process of subdivision into classes to a very great length, but the rule that all members of the same class must be treated alike in license and license tax laws is inflexible. The court, therefore. must always decide the question as to whether a discriminating license tax law discriminates between classes or between members of the same class. If the former, it may be constitutional; if the latter, it is not.

These principles are so firmly grounded in our law and so universally upheld by the courts that it would not be profitable to multiply citations. The Supreme Court of Florida in Seaboard Air Line Railway v. Simon, 56 Fla. 545, said:

> "Where persons or corporations engaged in the same character of business under practically the same legal duties and obligations are subjected to different restrictions or burdens with reference to the duties and

obligations of such business, and there are no legal or natural, practical, and reasonable differences of a material or substantial nature in the duties owed by them in the subject regulated, which justify a difference in regulations of the duties and obligations with reference to the business engaged in by all, the different restrictions or burdens imposed on some and not on all similarly conditioned may operate as a deprivation of property without due process of law and as a denial of the equal protection of the laws."

In Ferguson v. McDonald, 66 Fla. 494, the court said:

"There is no express limitation upon the power of the Legislature to provide for levying a tax on licenses, whether it be levied directly by and for the state, or through a municipality for its purposes; but such power should not be so exercised as to deprive any person of property without due process of law, or so as to deny to any person the equal protection of the laws."

In Afro-American Industrial and Benefit Ass'n v. State, 61 Fla. 85, the court laid down the same rule, and again in the recent case of Peninsular Casualty Co. v. State, 67 So. 165, 168 (Fla.).

See also:

Hardee v. Brown, 47 So. 834 (Fla.).

State v. Atlantic Coast Line, 54 So. 394 (Fla.), where the court said:

> "If the regulation here commanded to be observed were an unreasonable burden that in effect unjustly deprived the respondent of property rights, it would be in conflict with the provisions of the state constitution securing private rights as well as with the fourteenth amendment to the federal constitution."

And also in the same opinion said:

> "No unjust or arbitrary classification of those affected by the regulation sought to be enforced is made to appear. * * * The limitations imposed by the equal protection of the laws clause of the federal Constitution being only that such classifications shall have some practical relation to actual conditions, and shall not be a palpably unjust discrimination or merely arbitrary."

The doctrine with respect to licenses and license taxes is also fully recognized by the Supreme Court of Florida in Harper v. Galloway, 58 Fla. 255, where it was said with respect to the classification of persons in obtaining licenses to hunt game and payment of special taxes therefor:

> "Classifications of persons may be made in connection with the regulation, but such regulations should have some just relation to the real differences with respect to the subject regulated, and should not be unjustly discriminatory or merely arbitrary. If this rule is not observed, classifications of persons in connection with the regulation of

> the hunting of game may deny to some residents of the state the equal protection of the laws."

The classification in the instant case is clearly unjust and discriminatory. Railroads running their own sleeping and parlor cars are not required to pay the tax, but the plaintiff in error is. Both the railroads operating their own sleeping and parlor cars and the plaintiff in error have paid an *ad valorem* tax upon their property. There is practically no difference in the situation of either as regards ownership and operation of such property, and yet the plaintiff in error is required by the statute in question to pay a further tax upon the gross receipts derived from their operation. It is a rank discrimination as between it and such railroads. It is a clear violation of the constitution, and should not be sustained.

The case of Pullman Palace Car Co. v. State, 64 Texas 274, is most apposite. The court held that the law taxing owners of sleeping cars running them over the railway of another, but exempting the same kind of cars from taxation when run over the roads of the owners of the cars, was unconstitutional. That, in effect, is the law now before the court.

In that case the court said:

> "If the things done constitute in one person or corporation the taxed occupation, no one doing the same things can be omitted from the class taxed, without a violation of

> the constitutional provision; even though the omitted or excepted person or corporation may do more or other things than are necessary to constitute the taxed occupation, and though that done in excess may, within itself, constitute a distinct occupation subject to taxation, however kindred in nature the occupation may be."

See,

New Orleans v. Mutual Home Ins. Co., 23 La. Annual 449.

New Orleans v. Louisiana Savings Bank & Deposit Co., 31 La. Annual 637.

City of St. Louis v. Spiegel, 75 Mo. 145.

In Alabama Consolidated Coal & Iron Co. v. Herzberg, 59 So. 305, the Supreme Court of Alabama in holding a tax upon storekeepers conducting stores at which employees traded on checks or orders unconstitutional, said:

> "The tax is not, therefore, imposed upon the business or upon all engaged in a similar business, but is based solely upon the manner in which a party may conduct the business, and the foregoing section is repugnant to the state and federal constitutions."

In Siciliano v. Neptune Township, 83 Atlantic 865 (N. J.), the court held a municipal ordinance invalid which imposed license fees of $100 upon express wagons or motor vehicles used in delivering express matter, while only a $12 fee was exacted for like vehicles used in the business of

delivering goods but not in the express business. The court said:

> "The legislative warrant for imposing license fees found in Chapter 285 of the Laws of 1908 does not authorize the arbitrary and oppressive distinctions here made."

City of Brookfield v. Tooey, 141 Mo. 619. This was an action against the defendant for failure to comply with the terms of an ordinance imposing a tax of one per cent. per annum upon the cash value of goods, wares and merchandise on hand as shown by a sworn statement, as and for a license tax. The court said:

> "Counsel rightly concludes that the vital and exceedingly important question presented in this record is the validity of a license tax of one per cent. per annum upon the cash value of the goods, wares and merchandise owned by the defendant as a merchant in said city. * * * In a word, can this tax of one per cent. upon the cash value of the goods on hand be upheld as an occupation or privilege tax. After a careful investigation of the questions mooted and most ably discussed by counsel, it seems palpable that this is a 'property tax' pure and simple. It is an obvious misnomer to call it 'a tax upon occupation.' * * * Whether the city can divide the merchants of the city into as many classes as their assessments differ in amounts, and denominate each merchant a separate class according to his valuation,

> and enact for each a different license tax, as this ordinance evidently proposes, we deem unnecessary to discuss at this time. It is sufficient to say the present tax is so plainly a property tax and an effort to avoid the constitution that it is illegal and void."

Of course, in the instant case the Supreme Court of Florida has decided that the tax in question is in fact a license tax, and we are forced to adopt that view. The case just quoted from, however, is further strengthened by the holding in State ex rel. Wyatt v. Ashbrook, 154 Mo. 375, where the court held that a tax on department stores, imposed as a license tax, lacked every element of a license tax, was a revenue measure, and was unconstitutional. In that case the legislation provided for a tax, which in the act was called a "license fee," for conducting a department store, or mercantile business with several groups or departments, in which more than 15 clerks were employed.

The court held this was not a license fee in any sense, and that the act created an arbitrary and unwarranted classification of merchants. The court said, *inter alia,* after describing the act and the conditions thereunder:

> "So the practical operation of the act in question not only makes an arbitrary class of merchants in cities of 50,000 inhabitants or more, doing a retail business under one unit of management, where 15 or more per-

sons are employed, as contradistinguished from all other merchants of such cities and all other merchants of the state outside of cities of 50,000 inhabitants or more, whether conducting business under the same conditions as those designated in the class defined by the act or otherwise, but all merchants of that class are not necessarily subject to the same uniform rate of taxation," etc.

And again in the same case the court said:

"'Due process of law' is denied when any particular person of a class or of the community is singled out for the imposition of restraints or burdens not imposed upon and to be borne by all of the class, or of the community at large, unless the imposition or restraint be based upon existing distinctions that differentiate the particular individuals of the class to be affected from the body of the community. * * * While the legislature under its vested authority and power may arbitrarily impose taxes, restraints and burdens of various kinds, within the constitutional limitations prescribed, they may become more onerous and oppressive to the citizens, which the courts can do naught but uphold, it cannot create conditions or fiat classes that will operate to make legislation alone applicable to those artificial conditions and classes as general law within the meaning of the constitution, or that will entitle it to the designation of 'the law of the land'

or that will make the act 'due process of law.'"

The court further said with respect to the conditions as defined in that act:

> "Such classification is wholly without reason or necessity. It is so arbitrary and unreasonable as to defy suggestion to the contrary."

The conditions referred to by the Missouri court in the last quotation above are not different from the conditions which now form the basis of classification in the instant case, since the gross receipts tax provided for on sleeping and parlor car companies has been held by the state court to be a license tax.

We do not think the persuasive force of these last two authorities cited has been lessened by the fact that that court has so held.

Compare the classification of sleeping and parlor car companies with respect to the business done by them with the same business done under the laws of Florida by railroad companies who conduct a sleeping, parlor or dining car business.

We fail to see any difference whatever in the situation of the plaintiff in error and railroads operating their own cars which would justify the distinction which exists in the taxes imposed. Their business, so far as the operation of such cars is concerned, is identical. Yet the plaintiff in error is required to pay a larger tax and an additional and different kind of tax. The case of

Pullman Palace Car Co. v. State, 64 Texas 274, is directly in point. We do not see how the arbitrary exaction of this excessive tax from sleeping car companies in Sections 44 and 45 of the act can be sustained. The plaintiff in error is required by Section 45 to pay a tax which is not imposed upon others in identically the same business. It is submitted that such a requirement is arbitrary and unjust, and that the plaintiff in error is thereby denied the equal protection of the laws.

The situation bearing upon this whole general question, that is, as to the nature and purpose of this tax and whether it is a tax of the nature requiring uniformity grows out of a fact so well known as to be a matter of comment in a recognized text book on the subject of taxation, viz.,

> "The exaction of license fees for the purpose of revenue is a common method of taxation, especially in the *Southern states.* Thus there are business, occupation and privilege taxes, * * * which are in some states called by the generic name of 'privilege' taxes * * * In some states taxes are laid in this form of license or privilege taxation which in others are levied usually as *ad valorem* taxes upon property, and this applies to corporations, especially that class known as public utility or quasi public corporations, including common carriers."
>
> Judson on Taxation, Sec. 206, pp. 223-4. (Italics ours.)

The highest court of Florida having declared it to be a license tax, it is open to the scrutiny of this court to determine its exact nature as a license tax, that is, whether it is a license tax purely for regulation under the police power of the state or whether it is a license tax for revenue, and thus an exercise of the power of taxation, and also if in that exercise there is a denial of equal protection of the laws. That it is a tax for revenue only cannot be the subject of doubt in view of the lawful character of the business upon which it is levied (in no way dangerous to the health or welfare of the public but on the contrary contributing to its comfort and convenience,) the amount and source of the tax itself and the fact that it was imposed and collected for many years (when no license was necessary for the conduct of the business) as a property tax, (as in fact it was,) and credited to the general revenue fund of the state, together with the further fact that an entirely separate and specific license tax is provided for by law and has been since 1907, as shown in part II of this brief under the heading "License Tax." This gross earnings tax being such—taxation for revenue—imposed solely under the power of taxation of the state and in no sense as a regulation under the police power, it is subject to all of the restrictions against discrimination that are thrown around the general subject of taxation.

It seems to be the settled law that the license is the authority or permit to do; the exaction of the license fee (or tax) is an exercise of the power of taxation. It is laid down by Judge Cooley:

> "A license is issued under the police power; but the exaction of a license fee with a view to revenue would be an exercise of the power of taxation."
>
> Cooley's Const. Limitations, 5th Ed. Sec. 201, page 214.

It will not be questioned that Judge Cooley correctly stated the law in that behalf, and in fact the Supreme Court of Florida held when the very license tax law now in force in that state was first enacted, that the regulation must afford the same rights to all, alike, upon the same conditions. That was chapter 3681 of the laws of 1887, which has been substantially perpetuated ever since that time.

The case in which that holding was made by the Florida Supreme Court is in no way apposite except that certain principles were declared applicable to the license tax law of Florida. It was with respect to a license to maintain a market for the sale of meats. The court after quoting what is now substantially and almost verbatim the first section of chapter 6421 of the laws of Florida for 1913, and many other provisions then and now in the statute, said:

> "In the case of markets offering reasonably ample facilities for all who may desire

> to engage in vending such articles, the sales may be confined to specific places, yet all this must be done on principles of impartial and general regulation *affording the same rights to all alike upon the same conditions,* and not in the exercise of partial and discretionery or arbitrary will of the law-making power or any part of it." (Italics ours).

Jacksonville v. Ledwith, 26 Fla. 163, 9 L. R. A. 69, 77-78.

The court cited numerous well known authorities to sustain its holding, not necessary to here repeat.

In State of North Carolina v. Moore, 113 N. C. 697, 18 S. E. 342, there was involved the imposition of a license fee of $1,000 for the occupation of an immigration agent.

By the statute of North Carolina this occupational license tax was imposed in some counties but not in other counties and its violation was denounced as a criminal offense. The defendant was tried for violation and acquitted and the state appealed; the Supreme Court of North Carolina, upholding the acquittal, condemned the statute, and after reciting briefly the provisions of the statute above stated, said: (18 S. E. 343).

> "It must be manifest from these provisions that the principle of uniformity is entirely disregarded and that, if the act is to be considered as an exercise of the taxing power of the legislature, it must, under the

repeated decisions of this court be declared unconstitutional and void. Constitution Article 5, Section 3, authorizes the legislature to tax 'trades, professions and franchises' etc.; and, although it is not expressly provided that such taxes shall be uniform, 'yet' says Rodman, J., speaking for the court in Gatlin v. Tarboro, 78 N. C. 119, 'a tax not uniform, as properly understood, would be so inconsistent with natural justice and with the intent which is apparent in the section of the constitution above cited that it may be admitted that the collection of such a tax would be restricted as unconstitutional.' In Worth v. Wilmington & W. R. Co., 89 N. C. 291, 45 Am. Rep. 679, * * * Smith, Ch. J., in delivering the opinion of the court said: 'We should be reluctant to hold, if there were no question of constitutional right involved, that this method of levying taxes was sanctioned by our own constitution, and consistent with the equality and uniformity which it contemplates. The "uniform rule" to be observed in the exercise of the taxing power seems to be so far applicable to the taxes imposed on "trades, professions, franchises and incomes," as to require that no discriminating tax be imposed *upon persons pursuing the same vocation,* while varying amounts may be assessed upon vocations or employments of different kinds.' Again, in Puitt v. Gaston County Com'rs., 94 N. C. 709, 55 Am. Rep. 638, it was said: 'The principle of uniformity pervades the funda-

> mental law, and while not in the constitution applied in *express* terms to the tax on trades, professions, etc., *necessarily underlies the power of imposing such tax.*'" (Italics are ours.)

Of course, the question whether this gross earnings tax is a license tax is not now open to us here and this argument is in no sense directed to that question but is directed to the fact that this is in addition to the specific license tax and it is apparent, under the statute as construed by the Supreme Court of Florida, that the tax in question is an additional license tax for revenue assessed on property and measured by the earnings of the property, because it has none of the essentials of an ordinary license tax and has all the essentials of a tax on property measured by earnings. No business or occupation is specified for which the tax is required as a condition of obtaining the license; no one on behalf of the state is authorized to collect it as a license tax, and the first claim that it was a license was after this litigation was begun. There is no provision of law under which any official of the State of Florida could issue a license in consideration of the payment of the gross receipts tax, and none was ever issued upon payment of this identical tax, under former statutes nor under the 1907 statute, Section 47, for the years for which it has

been paid; no provision making the right to conduct or continue to conduct the sleeping car business in any way depend on the report to be made at the end of the year and the payment of the gross receipts tax; no permission granted thereby, and no officer could issue or grant any license or privilege under the law. It is a direct burden on the property of the company imposed for revenue only, and its imposition depends on no condition whatever.

In Youngblood v. Sexton, 32 Mich. 406, 419, the Supreme Court of Michigan said:

> "The object of a license is to confer a right that does not exist without a license. * * * Within this definition a mere tax on the traffic cannot be a license of the traffic unless the tax confers some right to carry on the traffic which otherwise would not have existed."

We wish to make it perfectly plain to the court that these identical gross receipts taxes, provided for and imposed under the statute of 1893, reenacted in 1895 and, voluntarily paid annually until after the enactment of the law of 1907, were then obviously property taxes measured by the gross earnings within the state; were the only taxes assessed during that period upon the property of sleeping car companies in Florida and were never, until so held by the court, treated by the legislature nor by the administrative officers

of Florida as license taxes. Up to 1907 the engaging in sleeping and parlor car business in Florida had not been made a taxable privilege for which a license or license tax was required, but such business was open to any one to transact without condition, hence the gross receipts tax could not have been a license tax *prior* to the statute of 1907 and could only have been a property tax. True, it was not a tax by valuation, but measured by income (U. S. Express Co. v. Minnesota, 223 U. S. 335; McHenry v. Alford, 168 U. S. 651), and as such subject to the rules of uniformity and to the permissive rule that a tax on property *may* take the form of a tax for privilege if the amount is made dependent on the value of the property situated within the state.—Postal Telegraph v. Adams, 155 U. S. 688, where this court said on page 696:

> "But property in a state belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its franchises within the state, *if* the ascertainment of the amount is made *dependent in fact on the value of its property situated within the state,* (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon)."

While probably unconstitutional as a property tax under Section 1, Article 9, of the Florida Constitution, it was nevertheless provided for, assessed and collected by the state, and paid by the appellant for many years and its constitutionality as a property tax was not questioned by either. The gross receipts tax imposed under the law of 1907 re-enacted in Section 45, Chapter 6421, Laws of 1913, is not different in its character in any particular from the same tax imposed by the prior statutes referred to, (1893 and 1895) and was not differently treated by the state authorities. As previously stated (under the heading "License Tax" *supra,* part II of this brief) the conducting of the sleeping and parlor car business was in 1907 made a taxable privilege for which a specific license tax was required and is now required under Section 44, Chapter 6421, Laws of 1913, and the provisions for this specific license tax do not, either in the law of 1907 or in the law of 1913 refer to the gross receipts tax which is separately imposed. The character of the gross receipt tax has not in any way changed. The legislature, however, having provided an *ad valorem* tax on the property, it (the gross receipts tax) could not be upheld in any event as a property tax but has been upheld by the Supreme Court of Florida as a license tax, and we think it must be apparent to this court that as a license tax it is an *additional* license tax, that is, additional to

the specific license tax provided for in Section 44 and is itself a separate license tax specifically assessed upon the earnings of the property which is also taxed *ad valorem*.

Considering all the history and circumstances surrounding this tax, even under the holding of the Supreme Court of Florida, it can be considered only as a separate and additional license tax *for revenue*. It is therefore subject to all the rules of uniformity and those against discrimination in the imposition of taxes for revenue.

Judge Cooley in his work on taxation says:

> "A license tax must be * * * so laid that none who follow that occupation shall escape it."

Cooley on Taxation, pp. 170-171, and notes.

This court has many times declared principles directly applicable to this subject and which condemn the gross earnings tax here involved as unjust, discriminatory and as denying the equal protection of the laws. It is unnecessary to encumber this brief with citations of these many declarations but we desire to draw attention to some of the expressions of the court which are especially applicable to the situation in this cause.

In Southern Railway v. Greene, 216 U. S. 400, the court speaking through Mr. Justice Day, who rendered the opinion, said on Page 412:

> "The equal protection of the laws means subjection to equal laws, applying alike to

all in the same situation. If the plaintiff is a person within the jurisdiction of the State of Alabama within the meaning of the Fourteenth Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation.

That a corporation is a person, within the meaning of the Fourteenth Amendment is no longer open to discussion. This point was decided in Pembina Mining Co. v. Pennsylvania, 125 U. S. 181, 188."

In sustaining this gross earnings tax and in holding it to be a license tax, in view of the discrimination in the enactment that we have pointed out, we think the learned Supreme Court of Florida must have lost sight of the rule to which we have here respectfully drawn the attention of the court, also of the view so well expressed by Mr. Justice Brewer in Gulf Coast & Santa Fe Railway v. Ellis, 165 U. S. 150, 154, wherein the Justice said:

"While good faith and a knowledge of existing conditions on the part of a legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminating legislation is to make the protecting clauses of the Fourteenth Amendment a

mere rope of sand, in no manner restraining state action."

In the same connection we call attention to an expression of Mr. Justice Bradley's more than thirty years ago in the case of Boyd v. United States, 116 U. S. 616, 635, which has been repeatedly adhered to by this court in cases involving constitutional rights:

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon."

We submit that the tax in question deprives the plaintiff in error of its property without due process of law, that plaintiff in error is discriminated against by its imposition and is forced to pay a tax which is not imposed upon others in a like situation; and that the classification which compels the plaintiff in error to submit to the tax is unreasonable and arbitrary.

Respectfully submitted,

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## APPENDIX.

Laws of the State of Florida, 1907,— Ch. 5596, 5597.

Chapters 5596 and 5597, Laws of Florida, 1907, are very comprehensive enactments, covering generally the subject of taxation and taking the place of most of the previous legislation on that subject.

### AD VALOREM STATUTE.

Chapter 5596 is entitled:

*"An Act Relating to Tax Assessments and Collection of Revenue."*

It seems to be intended to embrace generally the field of ad valorem taxation, and it also contains a section subjecting sleeping and parlor car companies to a gross earnings tax. The following is an abstract of some of the provisions of the act, matter in single space being taken from the act verbatim:

> "Section 1. That all real and personal property in this State, and all personal property belonging to persons residing in this State, not hereby expressly exempted therefrom, shall be subject to taxation in the manner provided by law.
>
> Section 8. The owner or holder of stock in any incorporated company doing business under incorporated name shall not be taxed for such stock; provided, that such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the property of said corporation is assessed for taxes where located and taxes are then paid on such property. * * *"

Sections 1 to 45 inclusive provide a general system for a uniform ad valorem tax on all real and personal property, and also for a poll tax on individuals. These sections prescribe the methods by which the taxes are to be assessed, levied, collected and enforced, and the duties of the various county and state officers in connection therewith. They also provide for the exemption from taxation of certain property, and that all other property, real and personal, shall be taxed as therein provided.

"Section 46. The President and Secretary, or Superintendent or Manager of any railroad company or street railroad company *or sleeping or parlor car company,* or the receiver thereof, whose *car,* track or roadbed, or any part thereof is in this state, shall annually, on or before the first Monday in March, return to the Comptroller of the State, under their oath, the total length of such railroad, the total length and value of such main track, branch, switch and spur track, and side track, lots or parts of lots not leased or rented, and terminal facilities, in this State, and the total length and value thereof in each county, city or incorporated town in this State, as of the first day of January. They shall also make return of the number and value of all locomotives, engines, passenger, *sleeping,* freight, *parlor,* platform, construction and other cars and appurtenances, and should any such company or its officers fail to make the returns required by this act on or before the first

Monday in March, *when such returns are made, or should any such returns not be made,* or should the Comptroller have reason to believe that any return so made does not give the complete and correct value of such railroad property, it is hereby made the duty of the Comptroller, Attorney General and State Treasurer, *after having given not less than five days' notice to the person or persons making the return of the time and place of hearing,* to assess the same from the best information they can obtain, specifying the value thereof in each county; and the value of the locomotives, engines, passenger, *sleeping, parlor,* freight, platform, construction and other cars and appurtenances to be apportioned by the Comptroller pro rata to each mile of main track, branch, switch, spur track, and side track, and the Comptroller shall notify the County Assessor of Taxes of each County through which such railroad runs of the number of miles of track and the value thereof, and the proportionate value of the personal property taxable in their respective counties, and he shall notify each incorporated city and town in which said railroad runs of the mileage, apportionment of rolling stock, and other property of said railroad within such city or town, and the value thereof shall be assessed by such city or town, as provided by law, and upon the value thus ascertained and apportioned, taxes shall be assessed the same as upon the property of individuals. *That every tele-*

*graph line in this State shall be returned and assessed in the manner as is provided by this act for the assessment of railroads, and in case of failure to pay the taxes assessed, the entire line of telegraph in this State and all of its properties, rights and franchises, or any property belonging to the same company, person or persons, may be sold in the same manner as is provided for the sale of the railroads or any of its property upon which any tax shall be due and not paid."*

The above quoted Section 46 is an amendment of Section 549 of the General Statutes of the State of Florida, 1906, which is said to be a re-enactment of Chapter 4514, Acts 1897, amending Chapter 4322, Acts 1895, and the matter italicized above is added to the law as it stood in 1906 by the act of 1907.

"Section 47. All sleeping and parlor car companies operating their cars in this state shall, on or before the first day of January, 1908, and annually thereafter, report to the Comptroller of the State of Florida, under oath of the Secretary or other officer of such company, the total amounts of their gross receipts derived from business done between points in this State; and at the same time shall pay into the State treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts, and if any such company shall fail to make such report to the Comptroller and pay the tax thereon as herein provided, the Comptroller

shall estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent to the amount of such taxes as a penalty, for the failure of such company to make reports, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected."

Sections 48 to 65 inclusive provide for the collection of unpaid taxes on railroad property and real estate, and for compensation to the county officials charged with the duty of administering the law.

Section 59 gives authority to tax collector of any city or incorporated town to sell property or railroad or telegraph companies for non-payment of taxes, and then continues:

"Nothing in this act shall be so construed as in any way abridging or limiting powers to assess, levy or collect taxes, licenses or assessments which have been or may be granted to any municipal corporation by special act or charter act, or as limiting such municipal corporation by special act or charter act, or as limiting such municipal corporation in the method of assessing, levying or collecting the same, to the methods established by this act."

There are many provisions in the act which provide for the administration and collection of ad valorem taxes, and for sale of property for non-payment of taxes.

The act was approved June 18, 1907, and it

provides that it shall go into effect upon its passage.

LICENSE STATUTE.

Chapter 5597, Laws of Florida, 1907, is an act entitled:

*"An Act Imposing Licenses and Other Taxes Providing for the Payment Thereof, and Prescribing Penalties for Doing Business Without a License, or Other Failure to Comply with the Provisions Thereof.*

Section 1. No person, firm or corporation, shall engage in or manage the business, profession or occupation mentioned in this act unless a State license shall have been procured from the tax collector of the county wherein the place of business may be located, or State Treasurer, which license shall be issued to each person, firm or corporation on receipt of the amount hereinafter provided, together with the County Judge's fee of twenty-five cents for each license countersigned by him, and shall be signed by the tax collector and the County Judge, and shall have the County Judge's seal thereon. Every word importing the singular number only, may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number, and every word importing the masculine gender only, may extend to and apply to females as well as males. Whenever the word oath is used in this act, it may be held to mean affirmation, and the

word swear in this act shall be held to include affirm.

Section 2. Counties and incorporated cities and towns may impose such further taxes of the same kind upon the same subjects as they may deem proper, unless otherwise provided in this act, when the business, profession or occupation shall be engaged in within such county, city or town. The tax imposed by such county, city or town, shall not exceed fifty per cent of the State tax. But such county, city or town may impose taxes on any business, profession or occupation not mentioned in this act, when engaged in or managed within such county, city or town."

Section 3 provides for the terms for which licenses may be issued, and for licenses for a fraction of a year, for transfer of licenses on a bona fide transfer of property used in the business for the transaction of which the license is paid.

"Section 5. That the following enumerated individual license taxes shall be paid to the State by the persons engaging in, managing or transacting the several occupations or professions named, to-wit:"

**SCHEDULE A.**

Then follows a long schedule of various occupations and the taxes payable by each.

Sections 6 and 7 relate to licenses for the sale and manufacture of intoxicating liquors.

Section 8 starts out with an exemption in favor of manufacturers of domestic wines, and then

follows this paragraph, as a part of Section 8:

"The owners, managers or agents of each of the following enumerated institutions, establishments, appliances and apparatus for the transaction of business or entertainment or accommodation of the public for profit shall pay the State license taxes set opposite their respective designations or definitions in Schedule B below, to-wit:"

SCHEDULE B.

Here follows a long enumeration, alphabetically arranged, of brokers, bankers, barbers, etc. —all still a part of Section 8 of the act, and then comes the following:

"That each insurance company or association, firm or individual doing business in this State * * * shall pay to the State Treasurer a license tax of $200 * * * and in addition thereto each of said companies shall, upon the 1st day of January after the passage of this act, and on the first day of each succeeding January thereafter, pay to the State Treasurer two per cent of the gross amount of receipts of premiums from policy holders in this State.

Companies or associations doing business under Chapter 5459, Laws of Florida, acts of 1905, shall pay to the State Treasurer two per cent of the gross amount of receipts from policy holders in this State. * * *

That each insurance company shall pay to the State Treasurer for each traveling agent or solicitor doing business in this State a li-

cense of twenty-five dollars. * * * *

Job printing offices, running by power, five dollars.

Laundries, steam, ten dollars. * * *

Sleeping and parlor cars, twenty-five dollars for each car.

With buffet, forty dollars for each car.

Dining cars, twenty dollars each.

Street shows, performances or carnivals * * * for each tent or other structure and for each day, five dollars. * * * *

Any train conductor, or any conductor of any sleeping car, parlor, buffet or dining car, who hauls or operates any such car within this State without such license, or who fails or refuses to exhibit such license when required by any collector of revenue in any county in this State, shall be guilty of a misdemeanor, and shall be punished therefor by a fine of not more than five hundred dollars, or by imprisonment for not more than sixty days for each offense.

All steamboats or steam ferries * * * shall pay a license tax of fifty dollars. * * *

Telegraph systems * * * shall pay a license tax to the Comptroller of fifty cents per mile."

Section 8 of the act concludes with requirement of license taxes from gas and electric light works.

Section 10 requires authenticated reports where amount of license tax is to be computed on basis of capitalization of corporations or on value of property used in the business.

"Section 11. Any person or persons, firm or corporation or association that shall carry on or conduct any business or profession for which a license is required, by either this or any other act, without first obtaining such license, shall, except in such cases as are otherwise provided by law, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than double the amount required for such license. The payment of all license taxes shall be enforced by the seizure and sale of the property by the collector; or in case of State license taxes payable either to the State Treasurer or the Comptroller by the state Treasurer or the Comptroller, as the case may be * * *."

Section 12 to 15 inclusive contain various provisions for the administration and enforcement of the taxes levied by the act.

"Section 16. That nothing in this act shall be construed as in any way abridging or limiting the powers which have been granted or may be granted, to any municipal corporation, by special act or charter act, for the purpose of requiring the payment of license taxes.

Section 17. That all laws and parts of laws in conflict with the provisions of this act are hereby repealed; but nothing in this act contained shall be held to repeal an act passed at the present session, entitled "An Act to impose license taxes on railroad companies."

The act was approved June 1, 1907.

Laws of Florida, 1907. Chapter 5623—(No. 28.)

"An Act To Impose License Taxes on Railroad Companies.

*Be It Enacted by the Legislature of the State of Florida*:

Section 1. Any railroad company doing business in this State shall pay annually on the first day of October to the Comptroller of the State a sum equal to ten dollars for each and every mile of its railroad tracks in this State, including branches, switches, spurs and sidetracks, as shown by the last assessment of the said railroad company for property taxation, as a license tax, one-half of which amount shall be paid into the State Treasury, and one-half of which amount shall be distributed immediately by the Comptroller to the various counties in which such railroad may be located, proportioned to the amount of railroad trackage in each county, which license tax shall be in lieu of all other State and County license taxes on said railroad companies."

Approved June 3, 1907.

## THE PULLMAN COMPANY *v.* KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA.

ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

No. 262. Motion to dismiss submitted March 19, 1917.—Decided April 9, 1917.

A suit to restrain a state official and his successors in office from estimating, levying and assessing a tax under a state law claimed to be unconstitutional is a suit against him as an individual and, in the absence of a statute otherwise providing, abates when his term of office expires and cannot be revived against his successor. *New Orleans* v. *Citizens' Bank*, 167 U. S. 371, 388, distinguished.

Writ of error to review 70 Florida, 9, dismissed.

The case is stated in the opinion.

*Mr. Thomas F. West*, Attorney General of the State of Florida, for defendant in error, in support of the motion.

*Mr. Frank B. Kellogg, Mr. Cordenio A. Severance, Mr. Robert E. Olds, Mr. Gustavus S. Fernald* and *Mr. John E. Hartridge* for plaintiff in error, in opposition to the motion.

MR. JUSTICE DAY delivered the opinion of the court.

Suit was brought in the Circuit Court of Leon County, Florida, by the Pullman Company against Knott, Comptroller of the State of Florida, to enjoin him and his successors in office from estimating, levying and assessing a tax on the gross receipts of the Pullman Company, on the ground that the state law authorizing the tax was void under the Constitution of the United States. The Circuit Court held that the law was constitutional and dismissed the bill; that decree was affirmed by the Supreme Court of the State. 70 Florida, 9. The case was then brought here upon writ of error.

It is now before us upon a motion of the defendant in error, by the Attorney General of the State, to dismiss the proceeding in this court upon the ground that there is no proper person defendant to stand in judgment in the action. It is averred, and is not disputed, that Knott, the defendant in error, is no longer Comptroller of the State of Florida, his term of office having expired on January 2, 1917, and that thereupon he retired from the office of Comptroller and has been succeeded by another, who is the duly commissioned and acting Comptroller of the State.

The original suit was against Knott, the bill stating that he was the duly elected, qualified, and acting Comptroller of the State of Florida. The bill sets forth the duties required of him in that connection in levying the tax against the enforcement of which the injunction was sought by the Pullman Company.

While it is true that the duty required concerns the State, the suit is against Knott as an individual, and he

alone can be punished for the failure to obey an injunction, should one issue as prayed for in the bill. Whether the court below was right in refusing the injunction and dismissing the bill against Knott, is the question presented. In such cases, a long line of decisions in this court has settled that the action abates upon the expiration of the defendant's term of office, and cannot be revived against his successor in office, in the absence of a statute so providing.

We had occasion to review and consider these cases in the case of *Pullman Company* v. *Croom, Comptroller of the State of Florida*, 231 U. S. 571, in which this court held, vacating the former order of substitution granted without discussion, that the action for an injunction against the enforcement of the tax abated upon the death of Croom, Comptroller, and there being no statute covering such cases no order of substitution could be made, and thereupon dismissed the appeal for want of a proper party to stand in judgment.

The case upon which the subsequent decisions are rested is *United States* v. *Boutwell*, 17 Wall. 604. In that case the rule and the reasons for it were stated by the court. That was a suit for mandamus against the Secretary of the Treasury, and involved the right to substitute the successor of the Secretary, his term of office having expired since the suit was commenced. The court held that the right to a writ of mandamus ceased to exist upon the defendant retiring from the office of Secretary, and that in the absence of a statute the writ must necessarily abate. The court further held that the duty sought to be enforced was a personal one, and existed only so long as the office was held; that the court could not compel the defendant to perform such duty after his power so to do had ceased; that if the successor in office could be substituted he might be mulcted in costs for the fault of his predecessor, without any delinquency of his own; and that were a demand

made upon him he might discharge the duty rendering the interposition of a court unnecessary, and, in any event, the successor was not in privity with his predecessor, nor was he his personal representative. (17 Wall. 604, 607, 608.)

In *Warner Valley Stock Co.* v. *Smith*, 165 U. S. 28, the previous cases were reviewed by Mr. Justice Gray, speaking for the court, and the principle was applied to a suit for an injunction.

In *United States ex rel. Bernardin* v. *Butterworth*, 169 U. S. 600, it was held that the substitution could not be made, even with the consent of the successor in office. In that case it was stated that it seemed desirable that Congress should provide for the difficulty by enacting a statute that would permit the successors of heads of departments who had died or resigned to be brought into the case by a proper method. Congress thereupon passed the Act of February 8, 1899, 30 Stat. 822, under the terms of which successors of officers of the United States may be substituted in suits brought against them in their official capacity. This statute has no application to other than federal officers.

In *Richardson* v. *McChesney*, 218 U. S. 487, an action was brought against McChesney, as Secretary of the Commonwealth of Kentucky. This court took judicial notice that his term of office had expired pending the suit, and that a successor had been inducted into office and held that the former rule applied, and that the only exception to it was where the obligation sought to be enforced devolved upon a corporation or a continuing body. *Marshall* v. *Dye*, 231 U. S. 250. This seems to be the rule in the Florida courts. *County Commissioners* v. *Bryson*, 13 Florida, 281. In the *McChesney Case* this court held that as the official authority of the secretary had terminated, the case, so far as it sought to accomplish its object, was at an end, and there being no statute providing for the substitution of the successor, the writ of error was dis-

missed; citing *United States* v. *Boutwell*, 17 Wall. *supra; United States ex rel. Bernardin* v. *Butterworth*, 169 U. S., *supra; Caledonian Coal Co.* v. *Baker*, 196 U. S. 432, 441.

It is argued for the plaintiff in error that this court has held that former judgments adjudicating rights against the State are binding in subsequent actions; that the mere fact that there has been a change of person holding the office does not destroy the effect of the thing adjudged. *New Orleans* v. *Citizens' Bank*, 167 U. S. 371, 388, 389. But that argument does not touch the question here. It was held in the *Citizens' Bank Case* that a holding that a contract for exemption from taxation existed, bound subsequent officers of the State. The difficulty here is that this proceeding in error, since the expiration of Knott's term of office, leaves no party defendant in error to stand in judgment.

It is said that this ruling involves great hardship and that official terms will expire so that cases of this sort cannot be reviewed at all in this court. In this case the judgment of the state court was rendered on June 26, 1915; the order allowing the writ of error to this court was filed September 24, 1915; and the record was filed in this court on October 8, 1915. It does not appear that any attempt was made to advance the case in view of the expiration of Knott's term of office as Comptroller in January, 1917. As the law now stands, we have no alternative except to dismiss the writ of error for want of a proper defendant to stand in judgment.

*And it is so ordered.*